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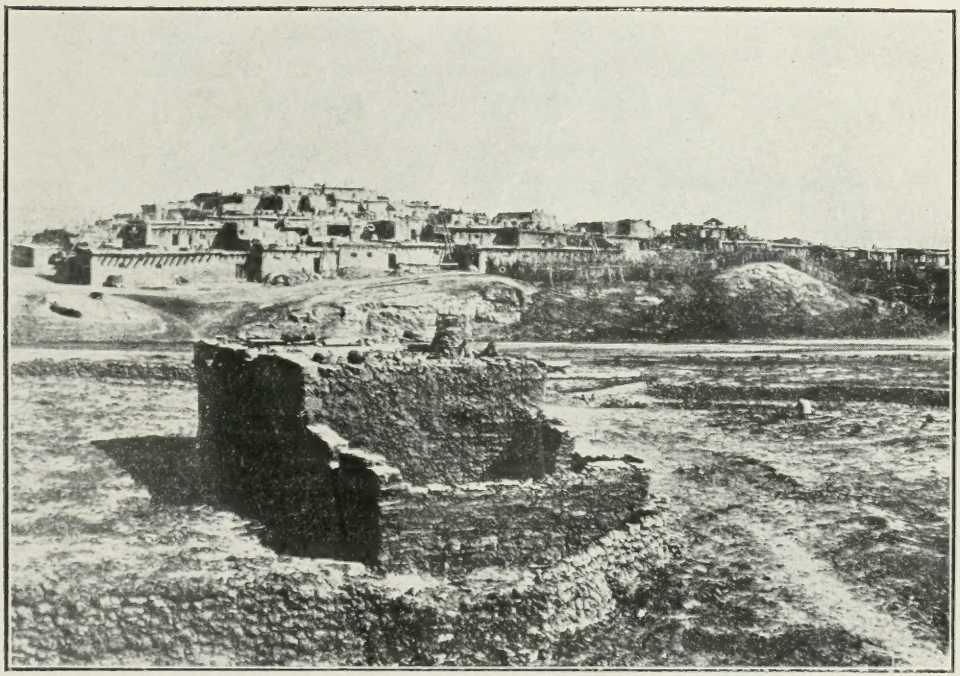
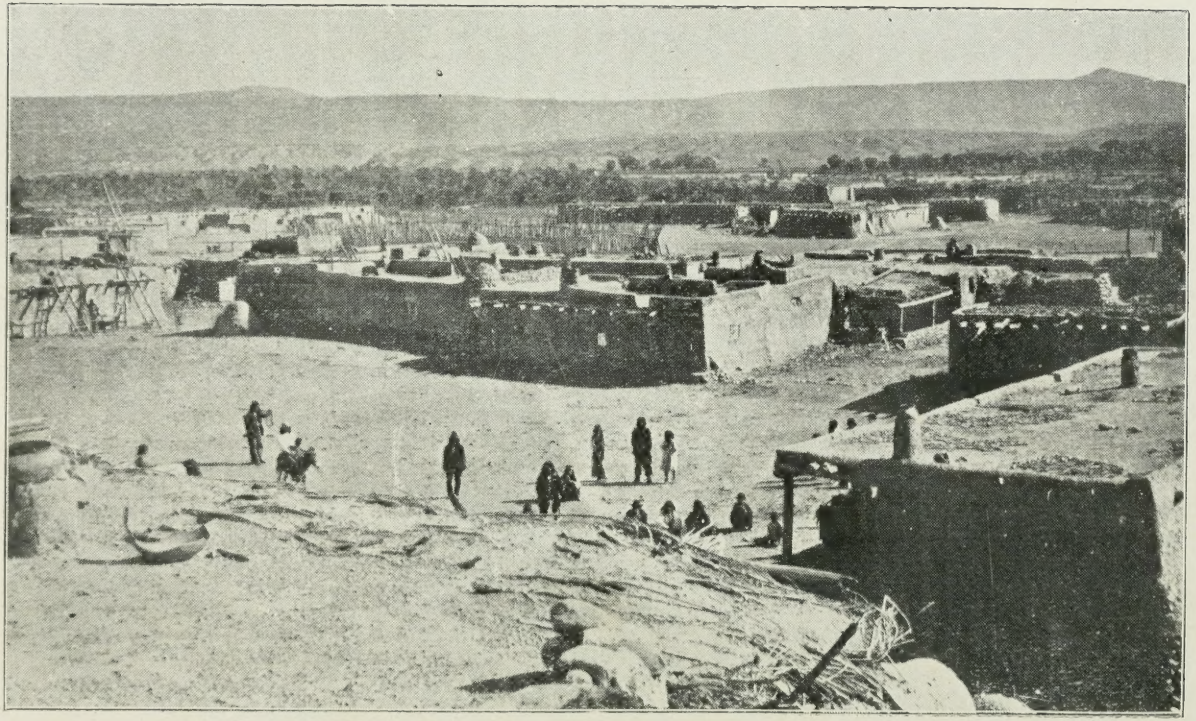


PUEBLO OF ZUNI

Photographed by Wesley Bradfield



PUEBLO OF COCHITI

Photographed by Wesley Bradfield

PUEBLO INDIAN LAND TENURES IN NEW MEXICO AND ARIZONA

THE Pueblo Indian villages of New Mexico at the present day consist of the following: Zuni, Acoma, Laguna, Isleta, Sandia, Santa Ana, Cia, Cochiti, San Felipe, Santo Domingo, Jemez, San Ildefonso, Pojoaque, Nambe, Santa Clara, San Juan and Taos, to which, for the purposes of this paper, may be added the villages of the Hopi, or Moqui, of Arizona, which last named, although discovering, in their habits, customs and forms of living and government, a great similarity to the New Mexico Pueblos, are not, strictly speaking, ethnologically, pueblos, but are a different race, probably with Shoshone origin.

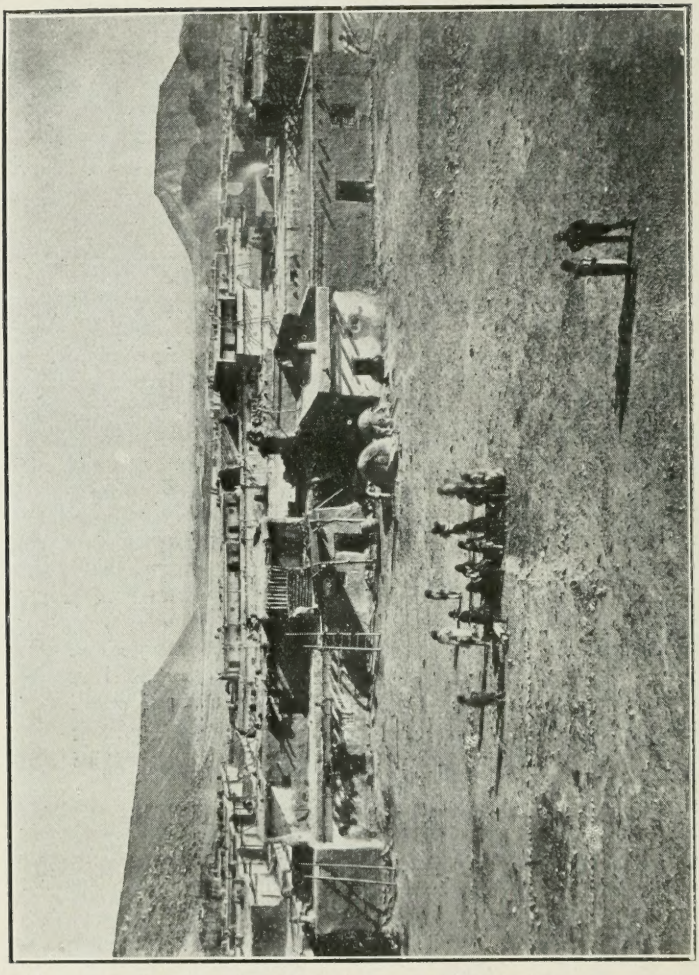
The Pueblos above enumerated are found in different localities in New Mexico, that of Taos being the furthermost north and that of Zuni the furtherest west, Acoma and Laguna being in the Rio Puerco drainage areas, and the others in that of the Rio Grande. The total population will not exceed 10,000.

The lands belonging to these several Pueblos vary in quantity, but usually embrace about 17,000 acres, held in communal, fee simple ownership under grants, or by virtue of royal decree of the King of Spain made during the period of Spanish sovereignty or by Spanish governors and captains general, as in the cases of Laguna and Sandia, which were Spanish built, to accommodate Pueblo refugees at the time of the re-conquest in 1693 and 1696, and confirmed by Congress since the acquisition of New Mexico by the United States (10 Stat. 308, c. 103, Sec. 8; 11 Stat. 374, c. 5).

To six of these pueblos adjacent public lands have been reserved by executive order for the use and occupancy of the Indians.

"The people of these pueblos," says the Supreme Court of the United States, "although sedentary rather than nomadic in their inclinations and disposed to peace and industry, are nevertheless Indians in race, customs and domestic government, always living in separate and isolated communities, adhering to primitive modes of life, largely influenced by superstition and fetichism, and chiefly governed according to the crude customs inherited from their ancestors, they are essentially a simple, uninformed and inferior people. Upon the termination of the Spanish sovereignty, they were given enlarged political and civil rights by Mexico, but it remains an open question whether they have become citizens of the United States."—United States v. Sandoval, 231 U. S. p. 39.

"Be this as it may," continues Mr. Justice Van Devanter, who delivered the opinion of the court (supra), "they have been regarded and treated by the United States as requiring special consideration and protection, like other Indian communities. Thus public moneys have been expended in presenting them with farming implements and utensils, and in their civilization and instruction, agents and superintendents have been provided to guard their interests; central training schools and day schools at the pueblos have been established and maintained for the education of their children; dams and irrigation works have been constructed to encourage and enable them to cultivate their lands and sustain themselves; public lands, as before indicated, have been re-



SAN FELIPE PUEBLO

Photographed by Wesley Bradfield

served for their use and occupancy where their own lands were deemed inadequate. With one accord the reports of the superintendents charged with guarding their interests show that they are dependent upon the fostering care of the government like reservation Indians in general; that, although industrially superior, they are intellectually and morally inferior to many of them; and they are easy victims to the evils and debasing influence of intoxicants."

This judicial expression, in a leading case, may well be followed by another from the supreme court of New Mexico, in which the opinion was written by a Justice having personal knowledge of the Pueblos, rather than information gathered from reports and briefs as was the case in the Sandoval case.

Although the New Mexico Court, in its opinion, unwittingly erred in many statements of an historical character found elsewhere in its opinion, still

with the sources at its command or brought to its attention which were meager indeed, the Court was well advised when it declared:

"The theory promulgated by some and believed by many, that the Spanish adventurers found the Pueblo Indian of New Mexico a wild savage and barbarous race; that they conquered them and reduced them to subjection, placed them in villages, and taught them the arts of civilized life, is a pure and unadulterated fiction and contradicted by the uniform history of the Spanish adventurers for over two hundred years. They found the Pueblo Indians, on their advent into New Mexico, a peaceful, quiet, and industrious people, residing in villages for their protection against the wild Indians, and living by the cultivation of the soil. Their villages are described, their locality mentioned, and we learn that the Old Palace, not one hundred feet from where we are now holding Court, was built upon the site of one of their ancient towns. That the Spanish placed them under subjection, treated them with cruelty, but planted the Catholic religion among them, and an improved civilization in time, and on that account they became an easy victim of their cupidity and despotic rule.

"For centuries the Pueblo Indians have lived in villages, in fixed communities, each having its own municipal or local government. As far as their history can be traced, they have been a pastoral and agricultural people raising flocks and cultivating the soil. Since the introduction of the Spanish Catholic missionary into the country, they have mainly been taught not only the Spanish language, but the religion of the Christian Church. In every pueblo is erected a church dedicated to the worship of God, according to the form of the Roman Catholic Church, and in nearly all is to be found a priest of this Church, who is recognized as their spiritual guide and adviser. They manufacture nearly all of their blankets, clothing, agricultural and culinary implements, etc. Integrity and virtue among them is fostered and encouraged. They are as intelligent as most nations or people deprived of means or facilities for education. Their names, their customs and their habits, are similar to those of the people in whose midst they reside, or in the midst of whom their pueblos are situated. The criminal record of the Court of the Territory scarcely contains the name of a Pueblo Indian. In short, they are a peaceable, industrious, intelligent, honest and virtuous people. They are Indians only in features, complexion, and a few of their habits; in all other respects superior to all but a few of the civilized Indian tribes of the country and the equal of the most civilized. This description of the Pueblo Indians, I think, will be deemed by all who know them as faithful and true in all respects. Such was their character at the time of the acquisition of New Mexico by the United States and such is their character now."

This opinion of the supreme court, written by Mr. Justice Watts, aided by Kirby Benedict, a former chief justice, and one of the most learned of the early bar of New Mexico, was pronounced more than fifty years since, and in the intervening period, and more particularly since the establishment of U. S. Government Schools in their midst, the character and quality of the Pueblo Indians as members of society and citizens of this country have been materially advanced. Our knowledge of the history of the Pueblo Indians, his character, customs, habits, ceremonies and tribal government, has been greatly enhanced since the foregoing opinion was written, owing to results achieved in historical and ethnological research by a large group of scientific workers in a number of our best equipped colleges and universities, notably the universities of California and Texas and the School of American Research, at Santa Fe. The work of the Bureau of American Ethnology, in the Pueblo Indian

(See page 38)

EL PALACIO

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PAUL A. F. WALTER, EDITOR.

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PAINTING AND SCULPTURE

Reproductions of Noted Canvasses.

The American Magazine of Art for January prints an excellent half-tone reproduction of E. L. Blumenschein's canvas "Superstition", first exhibited in the Museum at Santa Fe and which was given the first Altman prize at the National Academy Exhibit November to December, 1921. Leon Kroll's "The Hammock" shown in the same exhibit is also reproduced.

Province of Art Criticism.

Wm. Howe Downes in an essay on "Art Criticism" which appears in the January "American Magazine of Art" introduces his subject as follows: "Recognition is a vital need of the artist; he hungers and thirsts for appreciation and understanding. He can not do his best without sympathy. In that respect he is very much like all the rest of the world, only more so. The art critic, however, does not exist solely or even chiefly for the benefit of the artist. His primary purpose should be to bring the public into contact with art for the mutual advantage of both sides. Art ought to be brought into closer connection with life, every day life, and the people ought to be more directly interested in art, if only as an escape from sordidness, ugliness, vulgarity and dullness."

"The Eagle Dance" by Couse.

A painting by E. I. Couse, N. A., of the Taos Society of Artists, is reproduced in color in the calendar for 1922 of the A. T. & S. F. Railway. This is in accordance with the established custom of the company, which has for quite a number of years taken a Couse painting for that purpose. The subject this year is "The Eagle Dance," and with the artistic border in Navajo design, it makes a most attractive calendar. A description of the Eagle Dance is given as follows; "The Eagle Dance is a fragment of a rain and growth ceremony that was formerly common to all Pueblo towns. It was performed in the late winter or early spring and likely to be repeated from time to time during the summer. The eagle, or thunder bird, was supposed to have direct intercourse with sky powers and was much venerated by the Indians. The Eagle Dance is a dramatization of that supposed relationship. Two young men costumed as eagles are seen in almost every movement that would be possible to these great birds. You see them in the act of soaring, of hovering over fields, of perching on high places, resting on the ground, and going through the various mating gestures. The Eagle Dance is in some ways the most remarkable of all the major ceremonies of the Pueblo."

Davey Guest of Financier.

Mr. Randall Davey of the Santa Fe Art Colony, was a guest of honor at a dinner given by President Ward of the Irving National Bank in New York City. Mr. and Mrs. Davey expect to return to Santa Fe early in the spring.

Ufer Goes to Boston.

Mr. Walter Ufer of the Taos Society of Artists was a visitor in Santa Fe on Saturday, January 14th, on his way to Boston, where he will sit on the jury of selection of the Pennsylvania Academy. Mr. Ufer's painting in the Boston Ex-

hibit of Sixteen Eminent American Artists was given a place of honor. Other artists who have painted in New Mexico who are counted among the sixteen most eminent painters of America are Robert Henri and George Bellows. Mr. Ufer's picture "Confusion" was purchased for the Corcoran Art Gallery on the first day of the exhibit.

Sandzen in New York Exhibit

The New York Times in reviewing the annual joint exhibit of the New York Water Color Club and the American Water Color Society, speaks of Birger Sandzen as follows: "Among the more vigorous modernists, Birger Sandzen has a prominent place and fills it prominently. Perhaps without Van Gogh to point the way, he might not have developed his swirling, wriggling line and his manner of loosely embroidering his surfaces with long stitches that indicate form by their change of direction. But he is an individuality, not an imitator, and, given space enough, achieves unity. They are splendid pictures in a gallery, and their splendor would be enhanced in rooms containing the vivid color schemes of Scandinavian furnishings." Mary McCord, who spent a season in Santa Fe, is among those exhibiting.

MUSEUMS AND GALLERIES

National Museum Report.

The annual report of the United States National Museum for 1921 is to hand and reviews the operations for the fiscal year ending June 30th, 1921. It announces that Dr. Wm. H. Holmes, President Emeritus of the School of American Research, has severed his connection with the National Museum to become Director of the National Gallery of Art, carrying with him to the larger field the good will of the entire museum staff. He served as curator of aboriginal pottery from 1882 to 1893, as head curator of the Department of Anthropology from its organization in 1897 to 1902, when he became the chief of the Bureau of American Ethnology, returning to the museum as head curator of anthropology in 1910. In 1906 he also took over the curatorship of the National Gallery of Art. The report says: "The present condition of the anthropological exhibits is a monument to his taste and ability." Dr. Walter Hough succeeds Dr. Holmes as acting head curator of the Department of Anthropology of the Museum. Dr. Hough makes his first report as such, and among the accessions names the following: "A collection of 128 archaeological specimens, many of which appear to exhibit contact with non-Pueblo peoples gathered by Mr. J. A. Jeancon for the Bureau of American Ethnology from an ancient ruin near Taos; a collection of 114 antiquities from cliff dwellings and other prehistoric ruins northwest of the Rio Colorado made for the Bureau of American Ethnology by Mr. Neil M. Judd; a series of 183 specimens from prehistoric ruins in the Chaco Canon National monument collected by Neil M. Judd under the auspices of the National Geographic Society, which later presented the material to the national collection. Dr. Walter Hough presented an interesting series of shell beads and pendants and stone fetiches from Keetseel Ruin, Arizona, and the Zuni region, New Mexico." Speaking of the expeditions in the southwest, Dr. Hough says: "The major expeditions of a scientific nature have contributed little material for anthropology. Special archaeological explorations in Arizona and New Mexico, directed by the Museum, the Bureau of American Ethnology, and the National Geographic Society, added much excellent material. The expedition of the National Geographic Society to the Chaco Canon ruined cities in New Mexico, directed by Mr. Neil M, Judd of the National Museum, is expected to produce important results. This expedition, which set off in April, contemplates five years' researches in Cha-

co Canon. The preliminary work on this expedition was carried on during the summer and a large collection of artifacts sent in. Mr. J. Walter Fewkes' epoch-making investigations on Mesa Verde, Colorado, for the Bureau of American Ethnology and the Department of the Interior, were productive of distinctive scientific and educational results. The American archaeology collection has approximately reached the limit of expansion as to exhibition. By selection and elimination, the exhibit was improved. The collection from the Otto T. Mallery expedition under the auspices of the Washington branch of the Archaeological Institute of America to the Rio Chama, New Mexico, a locality not heretofore represented in the Museum, was installed." Speaking of the research work, the report says: "Dr. Hrdlicka performed services for the Department of Justice in differentiating full blood from mixed blood Chippewa Indians in important land cases, thereby saving over a million dollars in land and money for the Indians, in accordance with the statement of the Department. This is a good illustration of the practical value of studies of recondite subjects." Speaking of geological expeditions, the following note is made: "Mr. C. W. Gilmore was detailed in April to visit a fossiliferous era some 36 miles north of Santa Fe, New Mexico, for the purpose of making collections of paleontological material, and for determining the advisability of reserving certain lands for national monument purposes. A skull, lower jaws and other bones of an extinct rhinoceros, various limb and foot bones of a camel, and a small collection of miscellaneous specimens were obtained as a result of this trip." Further on: "Dr. Frank Springer has selected from his collection an instructive and showy biological series of fossil crinoids, an exhibit which occupies two entire cases and which cannot be surpassed in any museum. Dr. Frank Springer has begun studies preparatory to a monograph on the Silurian Crinoidea of North America, forms in which his collection is especially rich." The activities of the museum are so manifold and so far reaching that a mere annual review covers more than 200 closely printed pages.

Exhibit of Copies of Old Masters.

The Los Angeles Museum is at present featuring an exhibit of the copies of the old masters selected from the collection of Agnes Burrell Nation, who spent many years in gathering these pictures. Quoting Elihu Vedder, the catalogue of the 55 canvasses says: "Copies by the best artists available, carefully supervised as yours have been, cannot but prove satisfactory, for it should be born in mind that if substituted for the originals, it would require an expert to detect the difference."

IT IS WRITTEN

January "Arrow Points."

The January number of "Arrow Points", published by the Alabama Anthropological Society comes with a new and artistic cover. The body of the magazine, however, is still mimeographed and illustrated with original photographic prints, except that there is one insert on plated paper of an old print of the Massacre of Fort Mims. Dr. Thomas M. Owen contributes "Some Notes on the Shell Banks of the Alabama Coast." Altogether, "Arrow Points" continues one of the most interesting and most unique publications that comes to the desk of "El Palacio."

February "Pan American Bulletin."

"Boletin de la Union Pan Americana" for February gives an account of the international conference to limit armaments. The principal theme of the number, however, is an article on the conservation of food. There is an account of the new educational code

of the Republic of Peru and a review of the commerce of Latin America during the year 1920.

A Chicago Authoress.

Mrs. Josephine C. Chandler, the author of the beautifully illustrated article on "Eagle's Nest Camp, Barbazon of Chicago Artists", is a member of the New Mexico Archaeological Society. Her sister, Mrs. J. G. Osburn, of Roswell, is also a member. Mrs. Chandler is one of the prominent workers in the art extension movement in Illinois, of which Lorado Taft is the head, and is a personal friend of Mr. Taft. She is a young writer whose articles appear in various magazines and journals.

New Museum Bulletins.

The Butler Art Institute, of Youngstown, Ohio, has begun publication of a bulletin and so has the Wichita Art Association of Wichita, Kansas. The latter announces an exhibit by members of the Taos Society in the city library at Wichita.

Glimpses of the Far East.

Witter Bynner the poet, who will be in Santa Fe this month, contributes a group of poems to February "Asia." They are translations from the works of Li Po. The leading article in the issue is entitled "Within the Porte Called Sublime". Paul S. Reinsch contributes an essay on "American Merchant Adventures in China." The duo-tone illustrations this month are of especial artistic interest and come under the title "Where Beauty Lingers." The photographs are by Henry Eichheim and were taken in China and Japan. "Travels and Hazards in Central Asia", is the first of a series of travel articles, and is illustrated. There is an authentic account of "The Chita Government at Work," illustrated with a group of photographs entitled "Citizens of the Far Eastern Republic."

MUSEUM EVENTS

Casas Grandes Collections.

A public view of the part of the Casas Grandes pottery collection recently acquired by the Museum was given on Saturday evening, January 7th. That part of the collection has been installed in cases excellently adapted to the purpose and permitting a view of every specimen from all side . Deep interest was manifested in the collection as well as the proposed expedition into Chihuahua to be undertaken by Dr. Hewett, who was present to explain the origin and character of the pottery. The specimens exhibited were typical and respresentative and justified the judgment of Dr. C. T. Currelly of the Toronto Museum that it represented the highest attainment in pottery design and form on the western continent and in some respects surpassing the choicest existing specimens of the ancient world in Europe.

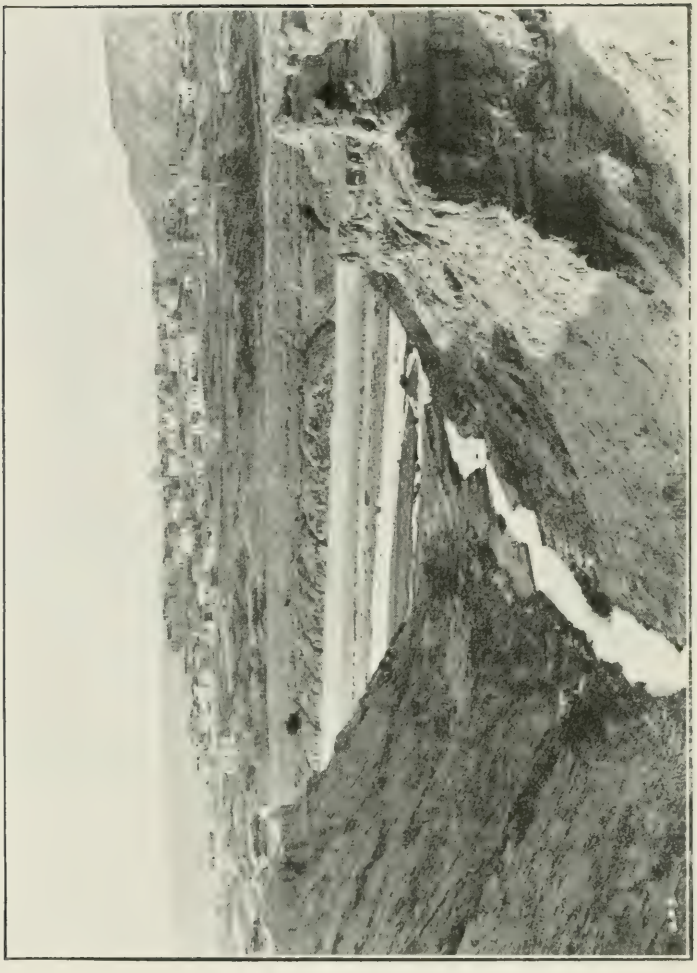
SOCIETIES AND CONVENTIONS

Friends of Art at San Diego.

The Friends of Art at San Diego have organized a chapter of the American Federation of Arts and have already been instrumental in securing several worth while exhibits for the San Diego Museum.

Annual Institute Meeting.

At the annual meeting of the Archaeological Institute of America at the University of Michigan, Ann Arbor, Dr. J. W. Magoffin of Johns Hopkins University was elected President to succeed Dr. J. C. Egbert, and Dr. D. M. Robinson was elected secretary to succed Dr. G. M. Whicher of Hunter College. The Santa Fe Society was represented by Dr. Edgar L. Hewett and Mrs. Charles A. Spiess. The meeting proved to be a great success.



PUEBLO OF LAGUNA

Photographed by Wesley Bradfield

field, has also been productive of much light on these subjects and its publications are of the greatest value.

The decisions of the Supreme Court of New Mexico when a territory, uniformly held that the Pueblo Indians of New Mexico, were at the date of the Treaty of Guadalupe Hidalgo, citizens of the Mexican Republic, and by virtue of the provisions of that treaty become citizens of the United States, none of them having elected to retain the character of Mexican citizens, as provided for in the treaty.

These early decisions, in my judgment, dealing with the question of citizenship have served only to create misunderstanding and have befogged many in their struggle to determine the exact political status of the Pueblo Indian at the date of the Treaty and his rights and powers under that instrument.

Citizenship not the Main Question.

Whether or not the Pueblo Indian was a citizen of Spain, of Mexico or of the United States after the treaty of Guadalupe, is not the main question involved here--which is--: what was the character and quality of that citizenship if existent at all, whether limited or restricted in any sense under the laws of Spain or Mexico, and what was and are his status and rights under American sovereignty, both before and since the admission of New Mexico into the sisterhood of states, and if such citizenship was of a restricted or limited character, what was his position in the matter of power to alienate or otherwise dispose of his property, real or personal?

In the final report, an outline of which is attached hereto, the status of the Indian under Spanish sovereignty and the quality of his so-called citizeship will be presented more elaborately than the necessities at this moment seem to require.

In my reading of the Recopilacion de las Indias and in Spanish narratives and chronicles of the events of the 16th and 17th centuries, covering crown policies in fixing the status of the almost innumerable peoples which came under the Spanish yoke incident to the New World discoveries and conquests, tremendous in areas and in population a moving factor was always in evidence, i. e. the small number of Spaniards, by way of comparison, in Spain or in its Old World possessions, from whom a supply for settlement purposes was available. For this reason, wherever possible, the newly discovered peoples were considered as subjects of the Crown and were accorded in every way possible all the rights and privileges of old world Spaniards-- Spaniards, however, and not natives, were appointed as local rulers.

This policy was also necessary and expedient for the reason that in the event of conflict with other European powers, claiming rights of discovery and dominion in the New World, Spain expected and did use, in many instances, the population of her newly acquired dominions as a source of supply for military protection, and did use the native population as a part of its military forces in the New World for the conquest and subjugation of other native populations which it sought to reduce.

But this vassalage of the natives, insofar as their land holdings was concerned, was not identical with that of the Old World Spaniard who chose for any reason to become a resident or citizen in the newly discovered countries.

The native's status as a subject of the Kingdom was of a restricted character and provisions were made from time to time by the Spanish Crown looking always to a complete safeguarding of his rights and land tenures, realizing and recognizing as the Crown did by experience, that such laws were necessary in order to protect them against the cupidity and avarice of many of the Spanish officials sent to govern over them and others who sought their fortunes in the New World.

The Spanish Crown and those in authority in Spain were also largely induced to these policies and the promulgation of these laws and decrees by the ecclesiastics who were in toueh with the natives at all times, and who, in reality, were his genuine local protectors against the aggression and tyrannies of rulers and their satellites and friends.

The Indian pueblos were missions under control of Franciscans, and had a form of municipal government with officers elected by the Indians themselves, but all under the control of alcaldes, who were named by the governor and captain general. In the larger pueblos, these alcaldes were always Spaniards but in the smaller sometimes half breed Indians were named to these positions. These alcaldes lived in the Spanish settlements adjacent to the pueblos of their jurisdiction, seldom or never in the pueblo itself.

As time proceeded after the Spanish conquest and the colonization of New Mexico had begun, the Spaniards, so-called, were by no manner of means Castilians. In every colony, and particularly in New Mexico subsequent to the reconquest in 1693-96, the soldiers and settlers were to a considerable extent made up of mestizos, coyotes and mulattoes, and as time progressed the admixture of Indian blood increased.

"The laws of the Indias provided that Spaniards and castes should not settle in the Indian towns and missions, on the theory that the association was bad for the Indian. Nevertheless before the end of the eighteenth century, many Spaniards, and especially castes, settled in the Indian pueblos, where they gained possession of the Indian lands, and by getting the Indians in their debt, kept them in practical peonage. Similarly the castes often got control of the pueblo government. The Indians were required by law to nominate their own 'governors,' but in many cases the coyotes and mulattoes managed to secure the election." —The Spanish Borderlands, Herbert Eugene Bolton, pp. 183-184.

The colonization of New Mexico was not attempted or accomplished until 1598, when by royal contract Don Juan Onate was permitted to do so. At the date of the contract with Onate, a decree of Charles V., of date March 21, 1551, was in effect, which decree or law provided that the Indians should be reduced to pueblos and that they should not live separated in the mountains, depriving themselves of all spiritual and temporal benefits.

These royal decrees were intended for general application throughout the Indias and the fact that the village Indians of New Mexico were already, and had been for centuries, residing in what are termed pueblos in these decrees, is immaterial in the general application of the laws.

The sites on which pueblos and reductions were to be formed were required to possess conveniences of water, land and wood, entrance and departure, and lands for cultivation (labranzas,) and an exido of a league in length, where the Indians might have their cattle without the possibility of their being intermingled with those of the Spaniards.—Recopilacion, Ley 8 Tit. 3. Lib. 6.

This description of amount of land is somewhat foggy; but it was probably intended to mean a league in each direction.

"There never was any general law," says Hall, "fixing the amount of four square leagues for an Indian pueblo. Law 6, title 5, book 4, of the Recopilacion de las Indias, which embraced ordinances Nos. 88 and 89 of Philip II. . . . refers expressly to towns of the Spaniards and has no application to those occupied by Indians."—Hall's Mexican Law, sec. 158, p. 62.

While it is probably quite true that there never was any general law fixing the amount of four square leagues for an Indian Pueblo, it must be admitted that the Spanish governors and captains general, except in cases where additional lands had been granted to the Indians, or where the Indians had acquired lands from the Spaniards by purchase, in New Mexico at least, always considered and estimated the Pueblo Indian holdings as being four square leagues in area and extent in the same manner as was provided for in pueblos established for and by Spaniards.

In the archives in the office of the United States General we find abundant proof of this fact.

In a petition relative to the lands of the Pueblo of San Idlefonso, dated September 18, 1704, filed by Captain Alfonso Rael de Aguilar, acting in his official capacity as Protector of the Indians, and on behalf of the Indians of the Pueblo of San Idlefonso, in which he complains of Captain Ignacio de Roybal, stating that the latter had acquired by grant all the lands on the western side of the Rio del Norte, opposite the Pueblo of San

Ildefonso, in violation of the royal ordinances and to the detriment of the Indians to whom said lands had belonged from ancient times and on which they had planted squashes and melons at the date of the complaint. In this complaint, Captain Rael requests the Governor to make Roybal present his instruments of title for examination and to give to the Indians the four leagues of land to which they were entitled and to compel Captain Roybal to confine himself to the lands which he had at the pueblo of Jacona, at Santa Fe and at other places.

This petition was presented to Acting Governor Juan Paez Hurtado on September 18, 1704, and he immediately ordered Roybal to produce his grant for examination.

This order was served on Roybal on the same day, and the following day he appeared at Santa Fe with his grant, a copy of which is attached to the proceedings.

This grant was made by the Marquis de la Nava de Brazinas (Diego de Vargas) on March 4, 1704.

In the petition for the grant, Roybal had stated that he wanted the lands "for a large and small stock and a horse herd," which practically made it nothing more than a request for pasturage permit. He described the lands as lying between the lands of the pueblo of Santa Clara and the Caja del Rio (the Caja del Rio is the box canon below San Ildefonso, sometimes called the Whiterock canyon), and the Rio Grande on the east, and the mountain on the west.

The governor, in making the grant, called attention to the fact that Mateo Trujillo had a grant extending from the boundary of Santa Clara down to a place where he, the governor, had halted with his camp; that from that point Roybal's grant should extend toward the Caja del Rio. There was no act of possession following the grant.

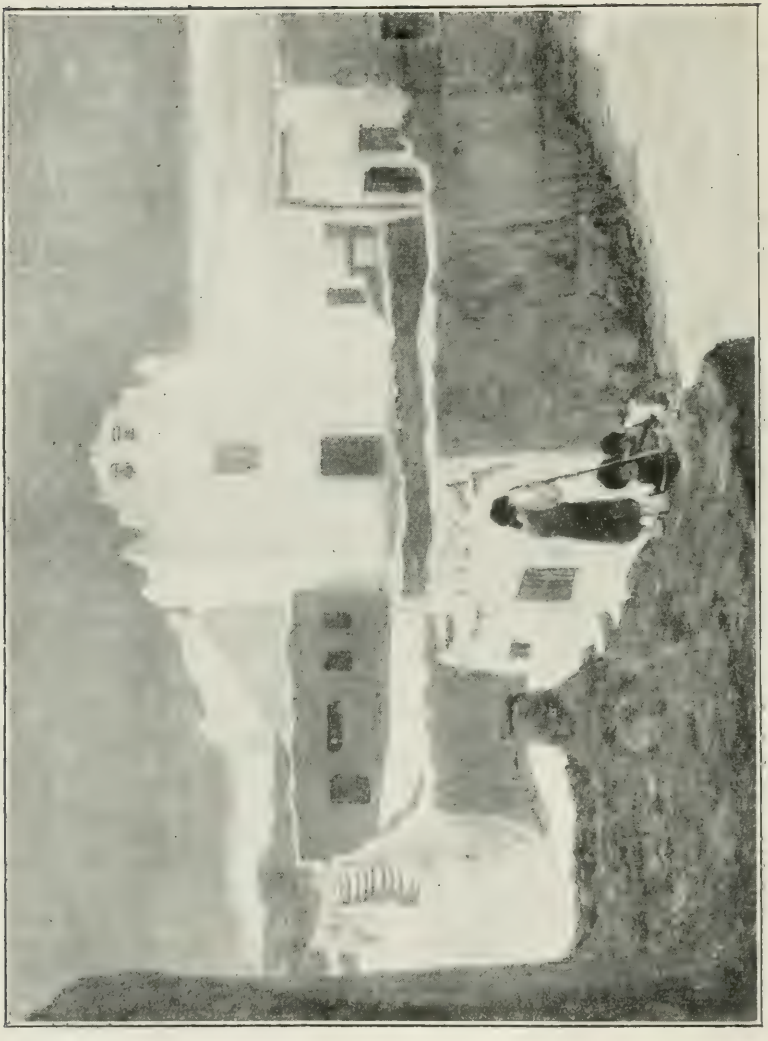
On the same day on which he presented his grant for examination, Roybal filed an answer to the petition of Rael in which answer he denies that his grant interferes with the Indians. He says that he had never prevented their pasturing their stock and horses on the land, but he denies that they have ever cultivated any portion of it.

The acting governor, on September 19, 1704, ordered Antonio de Aguilera Ysasi, in company with Captain Cristobal de Arellano and two attending witnesses, to examine the land and see whether the Indians had ever had on the other side of the river cultivated lands and an irrigating ditch.

On September 24, 1704, Aguilera and others went to the land in question and about three-fourths of a league from the pueblo he found what was apparently a ditch which came out of the river, and some land which appeared to have been cultivated. The Indians stopped at that point and told him that at that place, where some evidences of a monument were discovered the first Spaniards had designated to them their boundary, before the revolution of 1680.

Aguilera reported his examination to the acting governor, and the latter, on September 25, 1704, ordered Captain Cristobal de Arellano, chief alcalde of the district, to measure one league in each direction (from the pueblo), and designate monuments for the Indians; that the grant of Roybal should be understood to extend onward from said monuments; that if the measurements to be made by the alcalde should include any of the cultivated lands held by Matias Madrid, said measurements should be understood as effective only from the pueblo as far as Madrid's boundaries; and if the parties were not satisfied with this decision they might appeal to the new governor, who was soon to take charge, or they might appeal to the viceroy.

On September 28, 1704, the governor of the pueblo of San Ildefonso, Matias Cuntzi, and other officers of the pueblo, presented a statement by their protector, Rael, setting forth that they had occu-



MISSION AT LAGUNA
Photographed by Wesley Bradfield
Painting by Carlos Vierra

pied the lands in dispute before the Spaniards abandoned the kingdom (in 1680), as could be shown by the evidence of an old Spaniard named Domingo Martin, who knew that Father Antonio de Sotomayor, formerly minister of the pueblo, had planted them; and that Father Felipe Rodrigues, another minister of the pueblo, and Father Francisco de Sandoval also had planted them, and during a time of great famine had compelled the Indians to plant there in order to have food for their subsistence; that they had determined to plant the same lands in the coming year, when they discovered that Roybal had received a grant covering the land.

They further stated that their old monument could be found a little beyond a place where they had built a house and

a tower, and that evidences of their former ditch and cultivated lands could still be seen, though they were dim, as the lands had not been cultivated for ten years.

They ask that they be given the customary measurements and that monuments be erected to mark their boundaries.

The acting governor made an endorsement on this statement, to the effect that he had already taken steps necessary in the matter, and ordered it to be attached to the other proceedings in the case.

On October 9, 1704, the alcalde, Cristobal de Arellano, in compliance with the orders of September 25, went to San Ildefonso to make the measurement of the league. He notified Roybal of the governor's order in the premises in order that Roybal might be present, but the latter declined to come. Arellano then measured one league to the north, half a league to the south, half a league to the west and another half league on the east. His reasons for not completing the full league in three of his measurements are so badly expressed as to make his meaning very doubtful. I am inclined to think that he meant to say that the measurements in question included only cultivable land, and that the rest of it was of no value except for fuel. However, I am not perfectly certain what he meant. The one thing that is perfectly clear is the distance measured toward each of the cardinal points.

It therefore affirmatively appears that if the act referred to by Hall, Law 6, title 5, book 4, only governed the areas of pueblos of Spaniards, the distinction was never recognized by the Spanish authorities subsequent to the reconquest in 1693 1696.

It is well to state here that the use of the words "Indian" or "Indians" in all the laws, whether Spanish or Mexican, and the Treaty of Guadalupe Hidalgo, was not intended to cover nor do they refer to any "Indians" other than those living in villages.

To those familiar with the writings of all the early Spanish chroniclers, and those who have specialized in translation of the documentary history of the Spanish-American Southwest, it is most readily understood and agreed that when the word "Indian" is used they contemplated only those who lived in towns, and who are invariably referred to and described as naturales and pueblos, and as Indios del pueblos, and for the other Indians, such as the Apaches, Comanches, Utes or Navajoes, the term savages—Salvajes or barbarous Indians—Indios barbaros—was always the descriptive and differentiating form of expression.

Whatever may have been the law or the practice in New Mexico as to the "four square leagues" the Royal Cedula of June 4, 1687, gave unlimited power to the viceroy, the president of the audiencia, and the governors and captains general in fixing the amount of land either within or without pueblos to be given to the Indians.

In the exercise of the power conferred upon the Spanish governors and captains general by the Cedula of June 4, 1687, it may well be noted here that after the re-conquest in the restoration of lands to Spaniards who had been driven out by the Indians in the revolution of 1680, General De Vargas not only granted lands to Indians and established them in the possession thereof, but in so doing he also deprived the same Indians of land which they had settled upon and built their habitations and constructed irrigation ditches as having formerly been the holdings of the Spaniards whom they had expelled in 1680, and upon which he established a new colony of Spaniards which had been recruited by him for the resettlement of the province.

It is my unqualified judgment, that the title to all the pueblos to their lands proceeds solely under authority of the Royal Cedula of June 4, 1687, aforesaid, and a translation of the same is incorporated herein, as follow:

"Royal Cedula of June 4, 1687, up-

on the Fundo Legal (limits for the building of houses) of the so--called Indians- the ancient mode of measuring it, and the increase of a hundred varas above the five hundred of the primitive ordinance:- The King:- Whereas in my Royal Council of the Indias, there is information that the Marques de Falces, Count de Santistievan, being viceroy of the Provinces of New Spain, made an ordinance on the twenty sixth day of May, in the year of 1567, by which he ordered that the Indian Pueblos which should need lands for the Indians to live upon and to sow, five hundred varas, should be given to them, and whatever more they should need; and that from that time henceforth grants should not be given to any person of any farm (estancia) nor land, unless it could be placed a thousand cloth varas and silk measure distant and out of the way of the settlement (poblacion) and houses of the Indians. And whereas it appears from the copy (testimonio) of said ordinance which has reached the council that against all custom, order and practice the owners of farms and lands who have obtained grants that should be five hundred varas distant from the settlements of the Indians, are encroaching upon the lands of the latter taking the same away from them, either by fraud or violence, by reason of the poor Indians abandoning their houses and settlements, this being what the Spaniards long for and aim at, and therefore these one thousand varas of five hundred varas, which must be separated from the pueblo, are measured from the church or hermitage (ermita) or chapel, which is ordinarily in the center of the place; and as these five hundred varas are taken in by the pueblo, it results that no free space is left between the outskirts of the pueblo and the farms of the Spaniards, while it must be understood that the last five hundred varas must be measured on all sides of the town, as is ordered and commanded in Laws 12 and 18, Title 12, Book 4, of the new Recopilacion de las Indias; and on account of the many inconveniences, damages and losses which thereby result to these poor natives, it has been considered that it will be proper to order that those Indian Pueblos which shall need lands for the Indians to live upon and to sow, not only 500 varas shall be given them, which the said ordinance provides, but all that they may require, measuring these five hundred varas from the last boundaries and houses of the place, southward all around the town, to the east, west, north and south; which space must remain vacant. These five hundred varas are to be given, not only to the pueblos which may be the capital towns, but to all those others which may ask for and need lands, as well in those newly popu lated as in those to be populated and founded in the future; as by this means they will all have lands to sow and on which their cattle can eat and pasture; it being just, and very much according to my royal piety, to look after the Indians, who suffer so many injustices and molestations, of which I have notice; and in view of the fact that they pay the most revenue, benefit and fortify my royal crown, and all my vassals. In consideration of which, and having heard what the Fiscal of my said council has expressed, after due examination of the points in question, and of the already cited copy of the ordinance and Laws 12 and 18 of the new Recopilacion de las Indias, I have thought proper to resolve and order, as by these presents I do, that in conformity with the ordinance which the Viceroy, Count de Santistievan, made and ordered on the 26th day of May, in the year 1567, and of the laws compiled which are cited, that you shall give generally to the Indian pueblos of all the provinces of New Spain for their sowing lands, not only the five hundred varas of land around the settlement, which shall not be measured from the church, but from the last house in the place, as well on the eastern and western part as on the north and south; and that not only they shall have

five hundred varas, but one hundred varas more, making the complement of six hundred varas; and that if the place or town should have more than an ordinary population, and it should not appear entirely sufficient, my viceroy of New Spain and my royal audiencia of Mexico shall have care, as I charge and command them, to distribute to them a much larger quantity; and that to said places and settlements they shall distribute and assign as many more varas of land as shall appear to them necessary, without limitation. And as to the farms (estancias) for cattle, it is my will and I command that not only shall they be separated from the settlements and places of the Indian by the one thousand varas assigned by said ordinance of the 26th day of May, 1567, but by one hundred varas more, and that these one thousand one hundred varas shall be measured from the last house of the settlement or place, and not from the church; and if to my viceroys of New Spain it shall appear that the estancias ought to be at a greater distance than that of said one thousand one hundred varas, they shall order it as soon as they receive this despatch, or that it is manifest to them. For all the aforesaid, I give to my royal audiencia of Mexico the power and faculty to order it to be done and executed what may be necessary without limitation, charging them, as I do, that they look all possible ways for the relief, good treatment and preservation of the Indians, not only in that which maintains and preserves them in what is ordered and provided by the ordinance of the 26th of May, 1567, and Laws 12 and 18 of the Recopilacion de las Indias, which are cited, but that this may be with the increase of varas which in this despatch are granted, as much in what refers to the lands which must be given, and which the Indians are to have in all New Spain to live on and to sow, as in the distance at which the estancias must be; and not only this quantity of varas, but that which my said viceroy and royal audiencia of Mexico may perceive that they need, and which they shall distribute and designate to them. For such is my will, and as it is proper for my service; and of what shall be executed in this matter, a general account and record shall be given me on all occasions, because I desire to be informed of all that shall be done for the benefit of the Indians. Dated in Madrid, June 4, 1687. I, the King. By order of the King our lord, D. Antonio Hortiz de Ottalora."

On July 12, 1695, a royal cedula was issued, which in some minor respects changed the foregoing, but in every essential the cedula is by way of explanation of the provisions of the cedula of June 4, 1687.

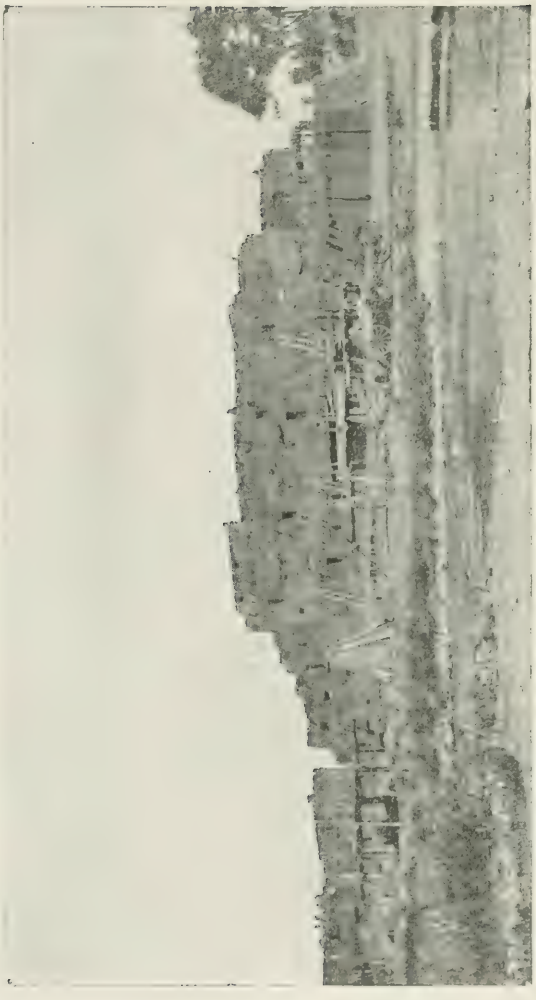
It is also my judgment, and in this opinion I am fortified with the conclusions of students more expert than myself, that the ancient (?) documents purporting to be grants made to the Pueblo Indians by Governor and Captain General Don Domingo Jironza Cruzate, at El Paso, in 1689, are spurious, and there can be no doubt that had Congress been aware of this fact at the time when the grants were confirmed and patented, congressional action would not have rested upon these instruments, but would have had for their foundation the royal cedula of 1687.

My reasons for declaring the so-called grant from Cruzate a forgery are:

(1) In the case of the Pueblo of Acoma, this paper of 1689 refers to the Laguna Indians having moved near to the Acomas on account of the water which the latter had for irrigation purposes. As matter of fact there were no Laguna Indians in 1689, as it is a conclusively established fact that the pueblo of Laguna was not established until 1699, ten years later.

(2) In the case of the Pueblo of San Juan, the document of 1689 also refers to the Pueblo of Laguna, which was not in existence at that time.

The document contains several phrases that are taken bodily from a work by Don Antonio Barreyro, entitled



PUEBLO OF TAOS

Photographed by Wesley Bradfield

"Ojeada sobre Nuevo Mejico," published in Puebla, Mexico, in 1832.

(3) In the case of the Pueblo of Laguna, both of the so-called ancient documents upon which the grant was made by congress are spurious. On the fourth page of document "B" is to be found a disconnected, rambling statement in regard to matters more or less intimately connected with the early history of New Mexico, written in the same handwriting as the three preceding pages and containing a number of statements couched in precisely the same words found in the book "Ojeada sobre Nuevo Mejico", by Antonio Bareyro. In fact the first four words on page 4 of document "B" are those which form the name of the book —"Ojeada sobre Nuevo Mejico."

(4) The signatures of the Governor, his secretary and the Indian witness, Bartolome Ojeda, are in the same handwriting.

(5) The signature of the governor, Cruzate, when compared with signatures undoubtedly genuine, are clearly forgeries.

(6) There never was a secretary of government and war by the name of "Guitara", as the name appears in these documents. His name was Francisco Ortiz Nino Ladron de Guevara.

(7) Neither Cruzate nor Otermin, governors at El Paso, were ever able to establish any communication whatever with the pueblo villages of the upper Rio Grande. The first to do this was De Vargas in 1692, three years after the date of the so-called grants.

The Onate Entrada and Colonization.

Prior to the 24th day of March, 1571, it would seem that the Indians could not dispose of their real estate. At that period in the history of New Mexico, while the existence of the New Mexico pueblos was known to the Spanish crown, there had been no attempt at settlement by Spaniards. This was during what may be termed the exploration period in New Mexican history. The colonization and settlement period did not begin until the entrada of Don Juan de Onate, in 1598, at which time the first permanent settlement of Spaniards was made in New Mexico.

Onate had been awarded the contract to effect this settlement in 1595, but it was not until 1598 that Onate left Santa Barbara, the last settlement or post in the northern frontiers of New Spain.

Passing over the events of his journey north, it is sufficient for this paper to state that early in April, 1598, he reached the vicinity of the present city of El Paso, Texas, and, on the 26th, camped on the Rio Grande, just below the city. Four days later he took formal possession "of all the Kingdoms and Provinces of New Mexico, on the Rio del Norte, in the name of our Lord King Philip." On the 4th of May he crossed the river at El Paso, and two months later had arrived at the Pueblo of Santo Domingo, on the Galisteo river, west of Santa Fe, a short distance from the present pueblo of that name, which is situated near the confluence of the Galisteo and the Rio Grande.

From this point he continued north and on July 11th, 1598, established his headquarters at the Pueblo of Caypa, which he named San Juan and which appellation it has since borne. His colonists came up with him early the following month, and, on September 5th, the completion of the first edifice for Christian worship in the present United States of America (continental) was celebrated. Thus began the first attempt at colonization of the areas today comprising the continental United States of America.

Sales by Indians during Spanish Sovereignty.

Decree of Philip II., March 24, 1571.

At the time of the Onate entrada, sale of their lands by the Indians was permissible under the Spanish laws. This authority is found in the decree of Philip II, March 24, 1571, by the terms of which it was ordered that when the Indians desired to sell their property, whether real or personal, it must be sold at auction in the presence of the alcalde, after the expiration of thirty days, in the case of real estate, and nine days in the case of personal property; and that any sale which did not have these requirements was invalid and of no effect; (de ningun valor ni efecto) but the alcalde might in his discretion abridge this period in respect to moveables.—Recopilacion de las Indias, Ley 27, Tit. 6, Lib. I.

It was also ordered, that the sale and distribution of lands to the Indians should be made in such a manner that there should be appropriated to them a surplus over and above what they might, in strictness, lay claim to; and that the lands upon which they should by their personal industry, have made improvements whereby their fertility was increased, should in the first place be set apart for them, in no event should they have power to sell or alienate them (por ningun caso se les

pueden vender ni enagenar).—Recopilacion de las Indias, Ley 18, Tit. 12, Lib. 4. Sunol v. Hepburn, 1 Calif., 276. Hall's Mexican Law, pp. 64, 65, 66.

Any sale of the lands of the Indians, without citation of the fiscal of the audiencia was prohibited, and rules and regulations were provided in order to protect the Indians in the possession, free use and enjoyment of all their possessions—Leyes 16, 17, 18 and 19, Tit. 12, Lib. 4

Instructions Concerning Sales and Alienations of Lands by Indians.

Ordinance of February 23, 1781

In order to enforce the observance of the laws just cited, the royal audiencia of Mexico, on February 23, 1781, adopted an ordinance entitled:

"Instructions concerning sales and alienations of lands by Indians."

This sets forth in full, the policy of the Spanish laws prohibiting such sales. This speaks of the general abuse with which the Indians persisted in the hurtful practice of alienating their lands, building lots and houses, as well those of their own individual acquisition, as those of community, whereby they subjected themselves to inexpressible losses (imponderables perjuicios) until at length, the most improvident among them found themselves destitute of habitations wherein to live, and were left without even the shelter of cabins sufficient for the preservation of human life. Reference is also made to the great prejudice which the Indians sufferred through loans, pledges, leases, and sales, which they were accustomed to make, voluntarily or under the constraint of compulsion, not only from one another, but also to strangers, Spaniards, mestizos and other castes, with no regard for the laws in the Recopilacion de las Indias, which declared such sales not only to be unlawful but prohibited, unless made with previous license and with all the legal requirements.

It declares that this practice, increasing from day to day would, if longer tolerated, induce the fear that the Indians would finally arrive at that most unhappy condition in which they would have neither habitations in which to dwell nor land to cultivate, nor means wherewith to procure sustenance or pay the duties imposed upon them, and would become inaccessible to the pious efforts for their preservation and increase, but would, when finding themselves in a destitute condition surrender themselves to idleness and vagabond life, to which they were naturally prone, would abandon their families and separate themselves from their villages, become fugitives and vagrants and thereby, to a great degree, deprive the royal treasury of the tribute which they were required to pay.

This law declares, in unequivocal language, that under no pretext whatever, should there be executed any sales, mortgages or leases, or other species of alienation of lands by the Indians, unless such sale, lease or other mode of transfer, should have first received the license of the superior government, the general court of the natives, or the royal audiencia, upon proof of the necessity and utility thereof, with a previous hearing of the fiscal, and after a full compliance with all the legal requirements; and all magistrates and escribanos (clerks) were prohibited from approving or authorizing any such sale or lease unless so licensed, under a penalty of fine and a loss of office, and the nullity of all such instruments (la nulidad de los que asi atorgaren), with an additional penalty that the vendors, lessors, mortgagors, and the purchasers, lessees and mortgagees, should be condemned to lose the lands which were, thereupon, required to be given to other necessitous persons, who would observe the laws in relation to their preservation and use.—Ordenanzas de Tierras y Aguas, 94 98.

"These are some of the provisions of Spanish and Mexican law," says the court in Sunol v. Hepburn, supra, "touch-

ing the disability of Indians to transfer their lands. All of them manifest the great anxiety which the rulers of Mexico have felt, to collect the natives together in communities and subject them to municipal regulations, to secure to them the ability to pay the tribute imposed upon them for the supply of the national treasury, to induce them to forget their ancient religious rites and embrace the Catholic faith, to reform their idle and roving propensities and make them industrious and useful subjects."

During and subsequent to the reconquest of the "Provinces and Kingdom of New Mexico" at a time, owing to the actions of the Indians in deserting and fleeing to the cliffs and cave dwellings in the mountain fastnesses, and also in joining with the "infidel Apaches" of the great plains and other roving tribes of "Indios barbaros, salvages" when the Spanish authorities at Santa Fe had every legitimate reason for inflicting the severest penalties upon the Indians for their apostasy and rebellious activities, a policy of complete forgiveness was always in evidence, provided the Indians would come down from their mountain cliffs and caves, embrace the Christian faith, return to their villages and be guided by the teachings of the Franciscan missionaries which the military and civil governors tendered them, repeatedly declaring that as to their lands and possessions the Spaniards would take nothing from them, and that they were subjects and children of the Spanish crown, in the same manner as were the Spaniards, and for the accomplishment of this crown policy military expeditions were fitted out and led in person by General de Vargas and other military officers at Santa Fe serving under governors who succeeded the reconquistador in the command and government of the province.—Campaigns of Gen. Diego de Vargas, Spanish Archives of New Mexico, vol. II. Campaign of Gen. Juan de Ulibarri to Cuartelejo to bring back the Taos and Picuris Indians.

This policy continued during all the years of Spanish rule in Mexico, and in the enforcement of these laws we find instances abundant in the political and legal history of New Mexico.

On January 5, 1811, the following decree, in relation to the Indians and their interests, was promulgated:

Protecting Indians. Decree of January 5, 1811.

"The scandalous abuses which are observed and innumerable vexations which are practiced with the primitive native Indians of America and Asia, having called very particularly the attention of the general and extraordinary cortes; and those worthy subjects meriting a special consideration of the cortes under all the circumstances, they order that the viceroys, presidents of the audiencias, governors, intendants, and other magistrates to whom it, respectively, belongs, dedicate themselves with particular care and attention to cutting the root of so many abuses condemned by religion, sound reason and justice; they shall prohibit with all their rigor that under no pretext, however reasonable it may appear, shall any person constituted in ecclesiastical, civil or military authority, or any other, of any class or condition whatever, afflict on the Indian in his person or occasion him an injury however slight in his property; of which all the magistrates and chiefs must take care with the most scrupulous vigilance. The cortes likewise declare that any infraction which may be made of this solemn declaration of the national will shall deserve their displeasure and a most severe punishment, and that any one who shall contravene this, its sovereign will, shall be punished with all the rigor of the laws. They likewise order that the Protectors of the Indians shall take care to duly comply with the sacred charge of defending their personal liberty, their privileges, and other exemptions; in the meanwhile, the cortes, after being informed of all that may appear further necessary and proper in this matter, will proceed with the successive dispositions and reg-

PUEBLO OF WALPAI

Photographed by Wesley Bradfield

ulations which may be deemed opportune. Finally the cortes orders that this decree shall be circulated with all parish curates in every point in America, in order that, after being read for three consecutive days at the parish mass, copies of it shall be sent to each one of the town councils (cabildos) of the Indians, and it may appear by this means to those subjects the care and paternal solicitude with which the entire nation, represented by their general and extraordinary cortes, occupies itself for the happiness of all and each one of them. The council of the regencia will inform itself of this decree in order to command the most exact fulfillment thereof in all its parts, and to cause it to be printed, published and circulated."

What would seem to be an extreme case in the enforcement of the Spanish law in New Mexico is found preserved in an Archive on file in the office of the U. S. Surveyor General in Santa Fe, which gives in detail the proceedings in a dispute between the Indians of the

Pueblo of Taos and some Spanish citizens who were occupying lands within the boundaries of the grant claimed by the Indians.

This manuscript begins with a petition by Jose Francisco Lujan, governor of the Pueblo of Taos, to the chief alcalde, Don Jose Miguel Tafoya, in which the Indian governor states that, whereas, the king had given to them "a league of land in the four directions," they wanted the alcalde to deliver it to them, in order that their families might spread out over the planting lands and have ample pasturage for their animals; and that knowing that the citizens who had usurped their lands would make damaging allegations against them and that the Indians would not know how to properly set forth their rights in the premises, they had requested Fr. Benito Pereyro to represent them. The petition ends with a prayer for justice.

Following the petition is a statement by the alcalde, April 11, 1815, in which he expresses the opinion that the Indians should apply for relief to the Governor of the Province, because the owners of the ranches inside the "Indian league" would make so great opposition to the granting of their petition that the matter could not be settled except by an order of the Governor.

On April 18, 1815, Governor Alberto Maynez issued the decree following:

"The league of five thousand varas measured from the cross in the cemetery in all directions, of which His Majesty made grant to each town of Indians from the beginning of its establishment, is in order that it is to be conserved for the maintenance of its natives, so that they have the use and cannot give nor sell without permission of the King; because of its being a patrimony or entailed estate, so that no judge or governor has the power to sell a part or the whole of said league."

"If it should result that for many years past or in any manner whatever, citizens may have intruded to plant and build on the Indians' land, they ought to lose the work done, leaving their ground free to them; but as from this grave injuries might result to the citizens, the chief alcalde of Taos will temper equity with justice so far as possible, hearing the parties and adjusting their differences in such manner that the natives shall not be left injured in the compromise which they may make; and Don Felipe Sandoval, the Protector of the Indians, will set forth after this decree whatever may occur to him in regard to the present petition."

On the same day, Felipe Sandoval, speaking on behalf of the Indians, suggested that the matter might be settled by a compromise, the citizens being given to understand thas the tract belonged to the Indians' "league" and that those who had made purchases within the tract had no rights to lands of the Pueblo.

Following the suggestion of Sandoval is a note by Governor Maynez, to the effect that if the planting permitted to the citizens in the Arroyo Hondo marsh should be prejudicial to the Indians, the citizens should not be allowed to plant; and the alcalde was directed to determine that matter as it might be just and proper.

On May 3, 1813, Pedro Martin, alcalde of Taos, reported to Governor Maynez what he had done in the matter under consideration. He says that he measured the league with an ordinary vara, and as a result of the measurement the citizens were deprived of a tract of land one thousand seven hundred varas wide from east to west, and three thousand nine hundred and fifty varas from north to south; that all this land had been improved by the citizens, and that included in it were three villages with about 190 families, and also a church, which the citizens had built.

The alcalde also stated that the citizens had represented to him that when the Comanches were on the warpath, the Indians of Taos gathered the citizens together and treated them with great kindness, in order to have their assistance

against the warlike Comanches; that, in addition to this, by a decree, dated May 1, 1793, Governor Fernando de la Concha ordered that the league be measured, and the citizens representing the grants included within the league agreed that the boundaries should remain at the customary places with the obligation of the pastures being common.

Also, the alcalde says that he proposed to the Indians that they should allow the Spaniards to retain their houses and ranches, and that in consideration of that the Spaniards should give them cattle and horses to the number of forty-five; that the Indian governor and his interpreter agreed to it, but when they laid the matter before the Indians the latter not only refused the proposition but abused them; that if the Spanish governor should decide that the citizens were to lose their ranches which they had bought in good faith, it was the alcalde's opinion that the Indians should lose what they had bought to the prejudice of the heirs of Sebastian Martin; that these Martin lands would provide a place for the Spaniards where they could be given other lands equivalent to what they were losing.

In conclusion, he says that the settlement of the Arroyo Hondo would not injure either the Indians or the Spaniards, because it was more than 10,000 varas distant from the league.

On May 6, 1815, Governor Maynez issued the following decree:

"By no means do I wish any wrong to the Indians of Taos or to the citizens. My foregoing decree of the 15th of last April cannot be changed, because it is just and well founded; it is sufficiently ample for the alcalde and the Rev. Father Missionary to arrange things so as to leave them by compromise in permanent peace; and the Arroyo Hondo will be settled by farmers, if it can be done without prejudice to third parties."

On May 20, 1815, the alcalde, Pedro Martin, and the missionary father, Fr. Benito Pereyro, made report to the Governor of what they had done in trying to bring about a compromise between the Spaniards and the Indians, and also made certain recommendations in the matter. They say that they urged the Spaniards to give the Indians fifty horses and cattle in consideration of the landmarks being left at their customary places; that the Indians rejected this proposal and demanded their league, etc.

They then state that in their opinion the league might be given to the Indians, but the latter ought to pay for the Spanish improvements and give to them the lands which the Indians had purchased in the tract which formerly belonged to Captain Sebastian Martin; that the Indians have the best land in the province, but do not cultivate it at all and rent portions of it to the Spaniards; that the latter being the conquering nation ought to have those lands which the Indians do not improve or cultivate, and also the Sebastian Martin tract.

In conclusion they say they would have decided the case had it not been that the Indians requested that the governor should determine its merits: therefore they transmit the papers with the statement made by the attorney for the Spaniards.

This statement, May 15, 1815, is directed to the alcalde and is signed by Jose Romero, who states that he has been appointed the defender of the citizens. He says that the damage done to the citizens applies to forty-four tracts of land and two villages containing about 200 families with a church built by the Spaniards; that the surrender of this property would be an annulment of the grants made to their forefathers in the name of the king; that they can exhibit documents and deeds showing that they had purchased the lands and that furthermore, the Indians not only permitted the making of the grants, but kindly treated the Spaniards in order to get their assistance in defending the pueblo against the savage Comanches. These are not the only arguments used by Romero, but are

probably the most important, He intimates that if the Spaniards should be deprived of their property they will be placed in a position of so hopeless character they may be driven to some act of desperation. This language evidently accounts for one of the statements in the governor's final decree, which bears date May 22, 1815, and is as follows:

"My foregoing decrees of the 15th of April and 6th of May cannot be better founded in principles of right and justice, nor more expressive to the end of inclining the parties to compromise and tranquility; and if the alcalde, the parish minister and Don Jose Romero find means of placing them in permanent peace without claims by either party, I give to them all of my authority for the purpose of mediation and compromise, for it is my intention that there be no more writing and that it all be remedied by verbal decisions, if it should be possible.

"When matters are conducted by legal steps, and without violence, there are no results to be feared, and to proclaim them is the same as to speak with little respect for the lawful authorities. It is a matter which if it is not cut short by a verbal decision, I shall take special care to settle it without any order from the General Commandant or from the Royal Audiencia, to whom, because of its gravity, its decision belongs. This occasion I should not wish to arise, considering the distance and the expense to the parties, and I shall appreciate it if the parties make a compromise for the good and tranquility of all, to which I shall contribute in the cases in which the Indians of Taos apply to me. But it being laid down as a principle that their rights to the league which His Majesty granted to them are incontestable, it is to the interest of the citizens to placate them, because if an ordinary trial be had it appears that the right is on the side of the Indians."

The status of the Pueblo Indian under the sovereignty of Spain, in relation not only as to the alienation of his lands, but in many other respects, was that of a dependent inferior race even though by the decree of February 9th, 1811, in which the general and extraodinary Cortes "desiring to secure forever to the Americans, Spaniards as well as the original natives of these vast dominions of the Spanish monarchy, the rights which as an integrant part of the same they must enjoy in the future" did decree that:

"The Americans, Spaniards as well as Indians and the children of both classes. shall have equal option as the European Spaniards for all classes of employment or destiny, as well in the cortes as in any other place of the monarchy, whether they be of an ecclesiastical, political, or military career. The council of regency must bear this in mind, and shall order what may be necessary for its fulfillment and shall command it to be printed, published and circulated."—Decree 31, February 9, 1811.

And this policy and manner of treatment of the Indians in the matter of use or disposal of their lands was carried over into the period of Mexican sovereignty. The policy was one of watchful interest in the welfare of the Indian, well exemplified relationship of guardian and ward with a specially named official known as Protector of the Indians, whose duty looked to the enforcement of the laws promulgated in their behalf.

The Plan of Iguala, adopted by the revolutionary government of Mexico, Feb 24, 1821, declares:

"That all the inhabitants of New Spain without distinction, whether Europeans, Africans, or Indians, are citizens of this monarchy with a right to be employed in any post according to their merit and virtues and that the person and property of every citizen will be respected by the government."

The Treaty of Cordoba, August 24, 1821, and the Declaration of Independence, September 28, 1821, reaffirmed these principles, as did also subsequently, the Mexican Congress, by two decrees,

PUEBLO OF ACOMA

one adopted February 24, 1822, and the other on April 9th 1825. By an act of September 17th, 1822, to give effect to the Plan of Iguala, it was provided that "In the registration of citizens, classification of them with regard to their origin shall be omitted" and that there shall be no distinction of class in the parochial books.

"That the Pueblo Indians were declared at that time 'Mexicans' and citizens; that they were recognized as such," says the Supreme Court of New Mexico, "no one familiar with the history of the Mexican government can question. That they are still recognized as citizens of the Republic of Mexico is evidenced by the fact that the present president of that Republic is a full blood Pueblo Indian. Did they retain the character and description of 'Mexicans' or of citizens at the time of the acquisition of New Mexico? It is true that subsequently qualifications were annexed to the exercise of the right of suffrage; the freedom of many of the citizens of the Republic of Mexico was abridged and narrowed; but I cannot find by any legislation or judicial decisions, the character of 'Mexicans' or citizens was taken away from the Pueblo Indians as a class of citizens."—United States v. Lucero, 1 New Mexico, pp. 455, 456.

Again, it must be apparent that citizenship under Mexico, as under Spain, is not the principal question. Let it be admitted that they were "Mexican citizens," does it follow that such citizenship had no abridgement, no reservations, no disabilities, and that in the matter of land alienation all disability was removed?

This interrogatory is answered by the Court in Sunol v. Hepburn, where it is said:

"The Constitution referred to, it is said, by conferring upon Indians the character of Mexican citizens, thereby removed all restraints on the alienation of lands by them. But this argument proves too much. Infants, idiots, lunatics, spendthrifts and married women are also Mexican citizens; yet it scarcely can be claimed that these constitutional provisions were intended to remove all disabilities under which they are placed by law, and ena-

ble them to contract and alienate their property without the intervention of tutor or curator, committee or guardian. So with the Indians. Though elevated to the condition of Mexican citizens, they must still contract and convey property in the mode prescribed for them by law."

"It is further contended," continued the Court, "that by virtue of the Plan of Iguala and the circular of January 11th, 1821, which declared that all the inhabitants of Mexico were equal in rights, without distinction of Europeans, Africans or Indians, the disabilities of the latter class to transfer their lands without control were removed."

"The same objection to this argument arises which has been noticed in respect to that founded on the Constitutions referred to. It proves too much. Besides it is laid down in the Febrero Mejicano, (Tom. I, p. 97,) in speaking of the Plan of Iguala, that all those laws, which establish different regulations, according to the diversity of races, still remain in force, when they concede some rational and substantial favor, though not when without reason they subject any class to a distinction ridiculous and abhorrent, and we have seen that the object of the disability under consideration was not to create an invidious distinction or impose a useless burden, but in part at least to favor the native inhabitants by shielding them from the impositions of the superior races." —Sunol v. Hepburn, supra.

In United States v. Ritchie, (17 How. 525, 540), the Supreme Court of the United States declares:

"The improvement of the Indians, under the influence of the missionary establishments of New Spain, which had been specially encouraged and protected by the mother country, had, doubtless, qualified them in a measure for the enjoyment of the benefits of the new institutions. In some parts of the country very considerable advancement had been made in civilizing and christianizing the race. From their degraded condition, however, and ignorance generally, the privileges extended to them in the administration of the government must have been limited; and they still, doubtless, required its fostering care and protection."

That this attitude of supervision and approval by the government in matters affecting land alienation, continued from the Spanish period into and through that of Mexican sovereignty, is evidenced by the record in United States v. Pico, (5 Wall., 536,) which was a proceeding for the confirmation of a claim to lands in California acquired under the Mexican government, in which case, on appeal from the District to the United States Supreme Court, Mr. Justice Field delivering the opinion of the court, says:

"The disposition of the lands assigned was subject at all times to the control of the government of the country. The Pueblo of Los Flores was an Indian pueblo, and over the inhabitants the government extended a special guardianship. The transfer of the land to the Picos was made in conformity with the existing regulations established for the protection of the Indians, under the supervision and with the approval of the local authorities, and appears to have been satisfactory to all parties."

That this supervision and control by the "local authorities" in New Mexico continued and was in full force and effect during the entire period of Mexican sovereignty is evidenced by many documents in the Santa Fe archives in the office of the U. S. Surveyor General and at Washington, D. C.—U. S. Sur. Gen. Office: Archives 1369, 1370, 1371, 1372, 1373, 1374, 1378.

It cannot be successfully maintained that the status of the Pueblo Indian was other than hereinbefore mentioned and while it may not have been "necessary to dwell specially upon the legal status of this people under either Spanish or Mexican rule," as was said in United States v Sandoval, supra, it is necessary and most essentially so, that such status under those sovereignties be fully out-

lined and explained, both to lawyer and layman, for the reason that when the United States sees fit under the ruling of the Sandoval case to assert its position of guardianship and protection of a dependent Indian people and as a "superior and civilized nation" assert its power and perform "the duty of exercising a fostering care and protection over all dependent Indian communities within its original territory, or territory subsequently acquired, and whether within or or without the limits of a State" by the bringing of omnibus legal proceedings, directed, possibly against entire communities, and involving untold expense and hardships upon occupants of land areas claiming title and ownership since the days of the Spanish re-conquest of New Mexico, in equity and good conscience, in the assertion of these sovereign rights, it would seem also no less a duty owing by the sovereign that it likewise provide a forum, declare methods and rules of procedure in matters of adjustment, and establish all the necessary machinery whereby substantial justice may be rendered as to the property rights of all its citizens, regardless of their present status or classification.

To all those familiar with the situation created by the ruling of the Supreme Court in the Sandoval case and the position taken by the Indian Bureau in the Department of the Interior, which it is sought to have maintained by the Department of Justice, such a course should be asked of Congress for the following cogent reasons:

1.—Congress had the power in admitting New Mexico into the Union of States to impose conditions relative to the Pueblo Indians within its borders.

Conditions imposed by Congress upon new states through their enabling acts are valid when they result from the exercise of powers conferred upon the Federal government.

The Federal power over Indians is of this character.—Coyle v. Oklahoma, 221 U. S., 559. Ex Parte Webb, 225 U. S., 663. United States v. Sandoval, 231 U. S., 29, and cases cited.

2.—The Pueblo Indians of New Mexico are Indians, and, therefore, subject to the constitutional power of Congress over Indians.

United States v. Dick, 208 U. S., 340. United States v. Rickert, 188 U. S., 432. United States v. Sandoval, supra.

3.—Congressional jurisdiction arises also because of the necessity for government protection of an inferior race of people.

In United States v. Beebe, 127 U. S., 358, the Supreme Court of the United States says:

"Not only does the Constitution expressly authorize Congress to regulate commerce with the Indian tribes, but long continued legislative and executive usage and the unbroken current of judicial decisions, have attributed to the United States as a superior and civilized nation the power and the duty of exercising a fostering care and protection over all dependent Indian communities within its borders, whether within its original territory or territory subsequently acquired, and whether within or without the limits of a state. The power must exist in the Federal government, because it never has existed anywhere else; because the theater of its exercise is within the geographical limits of the United States; because it has never been denied; and because it alone can enforce its laws on all the tribes. Accordingly, plenary authority has been exercised by Congress from the beginning, and the power has always been deemed a political one, not subject to be controlled by the judicial department of the government."—United States v. Kagama, 118 U. S., 375. United States v. Celestine, 215 U. S., 278. United States v. Heckman, 224 U. S., 413. United States v. Sandoval, supra.

In United States v. Sandoval, supra, the court declares:

"Long continued legislative and executive usage and the unbroken current of judicial decisions, have attributed to the United States, a superior and civilized nation, the power and the duty of exercising a fostering care and protection over all dependent Indian communities within its borders."

This last word from the highest tribunal, it will be seen, is almost word for word the language used by the court in the Beebe case, supra.

And in the case of Heckman v. United States, 224 U. S., 413, the court declares:

"There can be no more complete representation than that on the part of the United States in acting on behalf of these dependents whom Congress, with respect to the restricted lands, has not yet released from tutelage. Its efficacy does not depend upon the Indians' acquiescence. It does not rest upon convention, nor is it circumscribed by rules which govern private relations. It is a representation which traces its source to the plenary control of Congress in legislating for the protection of the Indians under its care, and it recognizes no limitations that are inconsistent with the discharge of the national duty."

The Pueblo Indians require protection. They were wards of both the Spanish and Mexican governments and as such the United States received them under its treaty obligations. Pueblo Indians, while under Spanish and Mexican rule, under certain circumstances and conditions, received this protection, and the transfer of sovereignty to the United States of America neither increased nor diminished the power of the Indians, nor the duty of the United States to continue the guardian and ward relationship which had existed under Spain and Mexico.

The main question is not whether an Indian could, under Spain or Mexico, sell his real estate, but under what circumstances and conditions, and did those circumstances and conditions continue after the United States acquired the country in which these Pueblo Indian lands are situate?

It is my judgment that such conditions did continue and that in the performance of its sovereign duty as guardian, the United States is in duty bound to require occupants of Indian lands to show a compliance with all such conditions.

To make such compliance under the strict rules of law governing the making of competent proof, in my judgment, in a very large number of meritorious cases, will be impossible, and in all cases will work a tremendous financial hardship upon individual claimants to lands which undoubtedly were regularly alienated, but as to which fact, competent proof is wholly lacking, when subjected to the strict rules of competency which must be adheredto in our courts.—United States v. Ritchie, supra. United States v. Sandoval, supra.

4.—That the omnibus actions now pending will be sustained by the courts, if prosecuted to final judgment, against a large majority of the individual defendants cited therein, as well as against other defendants who may be proceeded against in actions yet to be filed.

This result will follow, not through any fault of the defendants who perforce must be finally evicted. It will arise in most cases from failure of competent proof, and this failure is directly chargeable to the lack of laws requiring record of instruments during Spanish and Mexican times, to customs of the people, whereby transfers were made by delivery of possession, through lack of proof in probate and other court proceedings, and also owing to the great expense necessary even if such proofs were available, as in some cases they may be, and a further cogent reason lies in the fact that in many of the cases, during six or seven generations of open, notorious adverse

possession and occupany, there has likewise been no adverse claim advanced or made by the Indians themselves. That an enforcement of the law and the granting of the prayers of the United States, in its capacity as guardian, under all the circumstances in each case, is beyond the requirements of justice, not demanded by sound governmental policy; unwarranted by the exigencies of the situation and destructive of the interest of the Indians themselves.

Pleas of Statutes of Limitation and of Laches cannot be Successfully Urged.

5.—The ordinary defenses to actions of this sort afforded American citizens are lacking and unavailable for the reason that the supervision of Indian affairs and the protection of the Indians incumbent upon the United States government, owing to its status as guardian, creates a public interest as well as a public duty, and for that reason the ordinary defense, usually urged and pleaded in cases where the lapse of time has destroyed or removed competent proof of facts, of statutes of limitation cannot be successfully urged or pleaded by defendants.

The government is not bound by any statute of limitations where a public interest or a public duty is involved, nor is it guilty of laches through acts of omission or commission of its officers, no matter how gross, in a suit brought in its sovereign capacity to enforce such public right, or to assert a public interest.

Mr. Justice Gray, delivering the opinion of the court, in United States v. Nashville, etc., Ry. Co., (118 U. S., 125,) upon the question of statutes of limitation in such cases, says:

"It is settled beyond doubt or controversy upon the foundation of the great principle of public policy, applicable to all governments alike which forbids that the public interests should be prejudiced by the negligence of the officers or agents to whose care they are confided, that the United States, asserting rights vested in them as a sovereign government, are not bound by any statute of limitations, unless Congress has clearly manifested its intention that they should be so bound."—United States v. Nashville, etc., Ry. Co., 118 U. S., 125; citing: Lindsey v. Miller, 6 Pet., 666; United States v. Knight, 14 Pet., 301, 315; Gibson v. Choteau, 13 Wall., 92; United States v. Thompson, 98 U. S., 486; Fink v. O'Neil, 106 U. S., 272, 281.

6.—Because the prayer for discovery as to defendants' title, incorporated in the bills filed by the government acting as guardian for and on behalf of the Pueblos, in each instance must be granted, and failing in this regard, owing to circumstances and conditions existing in New Mexico from time immemorial, and through no fault or neglect on his part, judgment must be for the plaintiff, and defendant eventually ousted from possession.

In this manner it is quite possible for the government to avoid the defect in and criticism of bills heretofore filed for the purpose of determining the title to Indian lands—that there is an adequate remedy at law, ejectment, to which course, if relegated, the government would be compelled to bring a very large number of suits, the issues of which would be tried before a jury. In this manner the equity jurisdiction of the court will be maintained, and any attempt to invoke the right to or procure a trial by jury frustrated.

7. Many claims to land within the areas admitted to be Pueblo lands rest upon ancient transfers from individual Indians. These claims, unless supported by proof of governmental approval, Spanish, Mexican or American, respectively, must fail, for the reason that the Indian interest is communal and not a separate interest, subject to conveyance by any individual or group of Indians, and therefore, any deed from

an invividual Indian, or group of Indians, is absolutely null and void, unless such deed shows governmental participation and approval,—United States v. Joseph, 94 U. S., 618.

Any such deed is a nullity on its face and no one can derive title under it. Such a transfer was contrary to Spanish or Mexican policy, as well as American law, and is strictly forbidden, and where a deed of conveyance is void on its face, as being in violation of law, the party claiming under it is chargeable with knowledge of the law, and of the invalidity of the deed; and this is the rule in Mexican as well as in American law. In such case the party does not even derive color of title, which will give him constructive possession of a tract of land beyond his actual occupation.—Sunol v. Hepburn, supra.

8.—Because the decisions of our courts, since the Treaty of Guadalupe Hidalgo, have universally recognized the rights of the Pueblos to alienate their lands.—United States v. Lucero, supra, United States v. Joseph, supra,

On this account, and, believing the law settled upon that point, in recent years, many purchases of lands within the limits of the grants to the Pueblos, have been made, after the ordinary safeguards of securing the advice of competent attorneys have been obtained, and in all equity and good conscience, if such purchasers of lands have no sufficient title, then they should be re-imbursed if the lands are to be restored to the Indians, who, in truth, have never made objection, believing that many years previous the Pueblo had rightfully acted in the alienation of tracts of this character.

The injustice of such a state of affairs is incontrovertible. It is prejudicial to Indian and settler alike. The predecessors in interest of many of the purchasers of these lands, during five and six generations, have passed on to judgment before a court where race, previous condition, citizenship or other classification are not material. Their testimony is not within the reach of any mundane tribunal. The records of their acts in securing title from the Pueblos have been lost or destroyed, and present owners are unable, except in rare cases, to furnish the necessary proof to support a title, which has always been recognized as sufficient, in Spanish, Mexican and American times, if the strict rules of law are adhered to and followed.

9.—The fact that the United States may, under its authority, at any time in the future, take steps to oust persons in possession of lands within these Pueblo grants, and the continuing uncertainty as to title has cast a cloud on all lands held by white people within the Pueblo areas.

This situation is intolerable and should not continue. It is unsatisfactory to the Indians, and it has created a constant, continuing hardship upon the settlers.

The mortgage value of the lands is almost nothing; sales, leases and transfers have been discontinued and the feeling between the Indians and their white neighbors is constantly approaching a climax which may result in serious conflict, an avoidance of which is earnestly hoped for by settler and Indian alike; and any clash of parties which may arise suddenly would bring about results deplorable in the extreme, and in every possible way imaginable would be detrimental to the interest of the Indian. That any such events may be prevented is a reason paramount in importance why a solution of the problems, which in many instances have arisen through no connivance or inducement of either of the parties in interest, is urgent, insistent and demanding the earliest possible consideration by the Congress in the passage of some act whereby justice to all parties may be immediately promised and secured.

10.—The Indians desire that these mat-

ters be finally determined upon lines of justice and equity.

Advised by their attorneys, employed at various times and for differing purposes, and by attorneys appointed by the government of the United States, prior to the decision in the Sandoval case, that the Pueblo, acting through its executive officers and its council, had the authority to alienate its communal lands, such officers have made deeds of transfer in good faith and have received fair compensation therefor.

In addition to this source of title, the Pueblos have, in some instances, in controversies pending in the local territorial courts, been subjected to decrees and judgments quieting title against them. As to these, as a most urgent reason why some action should be taken in the premises, it may be added that probably, in a proper case, the United States, as guardian of the Indians, might secure decrees or judgments which would nullify and destroy any and all titles which originate with any such judgment or decree of the territorial courts, and the fact that such a course is possible casts a cloud upon that class of title, and the Indian, always ready to respect the laws and the judgments of the courts provided by the United States for his government and for the government of his white neighbors, is unable to differentiate as between courts, nor can he understand the reasons for the differing opinions of lawyers or of courts. As a result he is all at sea, and is dependent wholly upon the government and its representatives. This is a situation which should be clarified at the very earliest moment.

11.—Aggressions, encroachments and other discriminating practices by settlers upon Indian lands, claiming title of one sort or another, have been in vogue for many years, principally since the American occupation period.

To enumerate instances and methods of accomplishment would expand this paper unnecessarily. It is sufficient to say that such practices have been in evidence and the Indian has always been the losing party.

This should be stopped and for all time. Trespasses have been the rule rather than the exception in the use and occupancy of their pasturage lands, and our local courts have yet to show, in my judgment, where the Indian has ever received a square deal.

Assaults have been committed by white men upon these Indians when seeking relief in the courts, and all sorts of charges trumped up for the occasion, have been urged in justice of the peace courts, invariably resulting in the discomfiture and disadvantage of the Indian.

12.—Irrigation and the use of water in the cultivation of the lands in this semi-arid section are necessary for the successful raising of crops of almost every kind.

There are instances where white settlers and Indians are joint owners in irrigation canals, which serve Indian lands within the Pueblo areas and settlers lands within and without the Pueblo areas. In one instance, at least, the irrigating ditch has its source or intake or diversion point upon lands confessedly not Indian. Controversies of the most serious character have arisen over the cost and method of administering this ditch and the use and control of the water.

As the law stands, there seems to be no one forum having jurisdiction wherein these controversies may be adjudicated, and the judgment of the state court and that of the United States court might be in conflict to an extent whereby the most serious difficulties might ensue.

13.—The title of the Indians to the lands occupied by them from time immemorial, while confirmed by Act of Congress, followed by patent, did not constitute an original grant. It

was simply a quit-claim or confirmation of an already existing title.

The act of confirmation contains the following language: "That this confirmation shall only be construed as a relinquishment of all title and claim of the United States to any of said lands and shall not affect any adverse valid rights should such exist."

Owing to lack of information as to a proper description of the lands actually belonging to these Pueblos, and in most of the cases based upon alleged descriptions contained in the so-called archive of 1689, which is undoubtedy spurious, these patents and the surveys have quit-claimed to the Indians, in some cases, lands, the title to which was later decreed to other parties by the Court of Private Land Claims, and these decrees, with resulting conflicts as to boundaries, etc., have also cast a cloud upon the title to both classes of holdings, a condition which can only be remedied by legislation.

14.—Bills pending in Congress.

For the purpose of correcting the evils which have arisen and for the quieting of title to lands within these Pueblo grants and reservations in the States of New Mexico and Arizona, two Bills have been introduced in the Senate, S. 1938, and S. 2274.

The first may be dismissed from any consideration whatever as being a limitation statute and unconscionable in the extreme.

The second presents a method and the machinery for correcting existing evils, but it, too, has several very objectionable features, among which, attention is called to the following:

(a)—It fails to cover a considerable number of problems presented other than by a limitation which is devoid of any favorable consideration whatever.

(b)—The bill provides that two of the members of the commission provided for shall be bona fide residents of New Mexico and Arizona respectively.

This provision is bad in principle. There is no reason why the nation's executive should be limited to the states most interested in selecting the members of the commission.

(c)—The salaries provided for the commissioners are quite inadequate to attract or secure service of the character which the situation demands.

(d)—The provision that the United States may appear through a representative of the Department of Justice, if the commission so desire, is quite in keeping with the general theory of the proposed measure, which, in my judgment, is clearly anti-Indian, and not in keeping with the duties of a guardian of a dependent and inferior class of people.

(e)—From experience and intimate acquaintance with New Mexico and Arizona people and their ideas, as a rule, as to a proper solution of the problems which confront us, it is my judgment that a commission named wholly from other states will not work to the disadvantage of the Indian nor his guardian.

(f)—The proposed measure in its abbreviated limitation of time, etc., is quite beneath the dignity of a great government, and does not meet the situation nor provide means for the solution of many of the issues which confront it in the administration of a public duty and the safeguarding of the public interest.

R. E. TWITCHELL.

SANTA FE NIGHT

(From El Cerro del Sol.)

By Phil Le Noir.

THEY'VE stolen the stars and scattered them down
On the trees and 'dobes of the dear old town.

Below in the halls of Hispanic mold
Roam the phantom forms of the Dons of old.

The moon o'er the Cristos its eerie way creeps.
The stars drowse out—old Santa Fe sleeps.

NOTES ON THE MIMBRES CULTURE

WITH the gradual improvement in New Mexico's state highways it has become possible for the archaeologist, in the course of a few days' field work, to motor through a territory that would have consumed many weeks of weary traveling in the days when Bandelier trudged afoot, blazing his trail across the Southwest.

On a recent trip to Tucson, Arizona, three members of the Museum staff took the opportunity to investigate and report on certain archaeological remains in the Rio Grande, Mimbres and Gila valleys. Over thirty sites of communal houses, both great and small, were examined, and at all of these extensive collections were made of potsherds and other relics with which the surface of everymound is strewn.

Five days were devoted to this work, and the greater part of this time was spent in determining as far as possible the nature and extent of the remarkable prehistoric culture of the Mimbres valley and its tributaries in Grant and Luna counties. A study of the potsherds collected in this region shows evidence of the meeting, if not the mingling, of two distinct cultures in the neighborhood of Deming. These are the Mimbres culture, of the upper river, and the Casas Grandes culture of Chihuahua. The collections of potsherds made at the upper river sites do not contain a single fragment of the Casas Grandes type of decorated pottery. On the other hand, at two of the so called Casas Grandes sites near Deming not a single fragment of Mimbres decorated ware was found. At a third a very few shards of the latter were collected, but not enough to denote that any considerable quantity might be found by excavation. Here, then, is an engaging problem for the archaeologist. Did two distinct cultures so expand in some peaceful and prosperous era of ancient times that they met, or even overlapped and intermingled, either in old established communities or in the formation of new ones? Or had the one begun to die out, or had it actually passed away before the other came to take up its abode on abandoned sites of communal dwellings long crumbled into ruins?

Further surface exploration of other sites may tell whether the two cultures were contemporaneous. Perhaps it can be determined only by systematic and extensive examination by archaeologists, trained to look for every bit of evidence they unearth.

It is regrettable that these very ruins, which hold such a treasure of ancient history, have been so despoiled by enthusiastic but untrained collectors who have burrowed recklessly through walls and floors, destroying everything in their path, including most valuable skeletal remains, in their search for the highly prized pottery of the Mimbres valley.

The Museum party was given most valuable assistance by Mr. and Mrs. C. B. Cosgrove, of Silver City, whose purchase and careful excavation of an archaeological site is proving a most valuable contribution to the archaeology of the Southwest. Dr. S. D. Swope, of Deming, guided the party to the noted pictographs in the western foothills of Cook's peak, and Mr. E. D. Osborne, also of Deming, accompanied the party to the three sites near that city and gave much information in regard to the whole region. Dr. R. F. Stovall, of Mimbres Hot Springs, not only assisted the party in the examination of many sites in the upper Mimbres valley, but also donated his valuable archaeological collection to the Museum. It is hoped that this preliminary survey may be extended in the near future to include the entire range covered by the Mimbres culture, and that certain sites may be thoroughly explored before they are despoiled by the pot hunter.

THE TUCSON MEETING

SINCE our archaeological societies are affiliated with the Southwestern Division, American Association for the Advancement of Science, members will be interested in a brief report of the second annual meeting which was held in Tucson the last of January.

Dr. Hewett, Mr. Bradfield, Mr. Chapman and Mr. Bloom were in attendance. Dr. Hewett is a member of the executive committee and chairman of the social science section, and at the joint meeting with the Arizona Archaeological and Historical Society he gave the address of the evening on "Native American Artists." The stereopticon slides, in colors, from the original painting by Indian artists of the various ceremonial dances were very fine, and when they were supplemented by the explanation and comments of Dr. Hewett the address was made one of absorbing interest.

Papers by other members of the Museum staff were under the titles, "Progress Report on Research in the Jemez Region," "Life Forms in Pottery Decoration of the Pueblo Area," "Beginnings of Representative Government in New Mexico." Prof. Clark E. Persinger, of the Las Vegas Normal, contributed a paper on "The Mixed Method of Choosing County Officials." Others from this state were "A Half-Century of Archaeological Research in the Southwest," by Paul A. F. Walter, secretary of the School, "Pueblo Indian Land Tenures," by Col. R. E. Twichell, regent of the School, and "The Use of Cat Tail as a Feed," by L. Freudenthal, of Las Cruces.

Altogether there were some sixty pa-

pers presented at this meeting, nearly double the number read at the El Paso meeting last year, and there are now eleven societies affiliated with the Southwestern Division as against six a year ago. This is an index of the firm footing which the division is taking, and the uniformly high quality of the papers and addresses show that there was a real need for such an organization of the scientists and research workers in the Southwest.

Members of the division were royally entertained, luncheon being tendered by the University of Arizona and the Tucson Chamber of Commerce, and receptions by the Faculty Club and the Arizona Archaeological and Historical Society. The use of many interesting instruments was demonstrated in the different laboratories; some listened to a concert in San Francisco over the wireless telephone, others enjoyed a look at the Arizona skies from the astronomical observatory. Trips were made to the San Xavier mission, to the Desert Botanical Laboratory, and to the Yaqui village just outside of the city.

The last was of special interest as Dr. Hewett and Mrs. Phebe Bogan had arranged with the Indians to give their Matachina dance. Compared with the same dance as given by the Cochitis or Santa Claras in New Mexico, these Yaquis seem to have lost nearly all the significance of the ceremony and, as they now give it, it must be a mere fragmentary survival from the past of their people. The home made instruments used were weirdly attractive, and the footwork and pantomime of a solo dancer were fascinating. This last seemed to do his part regardless of the other dancers, but he may originally have had a real part in the Matachina of the Yaquis.

There may be an interesting analogy between the Yaquis and the Penitentes of New Mexico. In her paper on "Yaqui Ceremonial Dances," Mrs. Bogan stated that they have their own chapel and their own "priest;" also that no Yaqui can participate in their ceremonies unless he is a member of the "Third Society of Jesus." This suggests that possibly they have an organization which is an offshoot of the Jesuit order, just as the Penitentes had their origin in the "Third Order of St. Francis."

The next annual meeting of the Southwestern Division has been set for Santa Fe during September, immediately following the Santa Fe Fiesta, and plans are already being made to give the scientists "something different" in "the City Different."

IT IS WRITTEN

Art and Archaeology.

The New Year's number of "Art and Archaeology" features a review and critique of the biennial exhibit of American painting in the Corcoran Gallery of Art at Washington, D. C. The contribution is by Virgil Barkner and is illustrated with reproductions of the more notable paintings, including "Strange Things" by Walter Ufer, which is given a full page duo-tone. Speaking of the painting the critique says: "Ufer has to some degree neglected textures: but certainly he has emphasized form with a boldness characteristic of him and excellently well suited to the primitive nature of his materials." At another place he says: "Walter Ufer's 'Fiddler of Taos' so vividly conveys the blinding quality of the desert light that it repels eyes accustomed to a more genteel style of painting; and that is one reason why his work should be viewed with interest and respect." Of other men who have painted or are painting at Taos or Santa Fe, the following note is made: "It takes a big theme to fill a big picture, and neither of Hassan's subjects fits the size of the frame that encloses it. The same mistake is found in Leon Kroll's studio-lighed orchard scene. Robert Henri's sculpturesque nude tempts one to linger. To loiter through the exhibition is the ideal way of seeing it; but to loi-

ter through one's commentary is the ideal way of killing interest." Harvey M. Watts describes and pictures the Benjamin West exhibition at the Art Alliance, Philadelphia, and Helen Wright describes the portrait sketches of William Oberhardt. In fact, the entire number is given to art subjects, these including the "New Memorial to Dante in Washington," "Self Portrait of Thomas Sully," "Exhibition of the American Water Color Society and the New York Water Color Club," "Barney's Scottish and American Landscapes at the Ehrich Galleries," "Lynn Jenkins' Sculptures," and "Old Masters." Among the current notes and comments the proposed archaeological expedition of the School of American Research into Chihuahua, the general meeting of the Archaeological Institute at Ann Arbor, and the work of the American School in France at La Quina are discussed. The number is one of great beauty of illustration and interest of text.

HISTORY AND TRADITION

Second Entrada of De Vargas.

The January number of "The Franciscan Herald" continues the history of the Franciscans in New Mexico by Father Zephyrin Englehardt. The chapter is illumined with a half tone portrait of the venerable historian. The period covered in this chapter is that about the time of De Vargas's second expedition, beginning, however, with the administration of Governor Cruzate, followed by that of Posada, who held the place until 1689. Graphic description of the battle of Zia in 1689 is given. The historian says: "A bloody battle ensued in which the rebels defended themselves with such valor and fury that many allowed themselves to be burnt alive on their housetops rather than surrender. The number of Queres Indians, of this pueblo as well as of Santa Ana, and of others who had come to succor the besieged, left dead in this battle amounted to 600 of both sexes and of different ages. Only four old men (medicine men or sorcerers) were captured alive. They were executed in the plaza of the pueblo." The second expedition of De Vargas marched northward in August, 1692. He reached Cochiti with only forty of his men and fifty Indians accompanied by three friars. Encountering no opposition, the little band proceeded to Santa Fe, which was sighted at four o'clock in the morning of September 13th. On the following day the Indians yielded and rendered formal obedience. De Vargas then set out to reduce the other pueblos to subjection. It was only at Jemez that he encountered persistent obstinacy. De Vargas returned to El Paso on December 20th, having traveled more than 600 leagues in four months. "It was a wonderful campaign, without the waste of an ounce of powder, without drawing the sword, and, what is more worthy of note and admiration, without the cost of a penny to the royal treasury, innumerable people were brought back to the fold of the Catholic Church, and the entire dominion was restored to his royal majesty, Carlos II. No Spaniard was found in the whole province, because all those who lived there at the time of the revolt, save those who escaped to El Paso, had perished. Seventy-four captive mestizos, however, were set at liberty and 2,214 children received baptism." Thus writes Don Carlos de Siguenza y Gongora. De Vargas raised another expedition of 800 individuals including 100 soldiers and 70 families for the expedition that left El Paso on October 13, 1693, to recolonize New Mexico. Thirty of the members died from hunger or exposure before the little army reached Santo Domingo, and it required several months to overcome the hostility of the Pueblos. Father Englehardt thus concludes his history, saying: "Age and infirmities compel the writer to discontinue the narrative, and to utilize what strength remains in order to complete the history of the California missions. He hopes and prays, however, that some

abler friar, on the scene of former missionary activity, may take up the thread of the narrative and continue it to modern times. The task will be much easier, inasmuch as the historical material is rich and interesting and within reach."

EXHIBITS AND CONVENTIONS

Print Makers Exhibit.

The Print Makers Society of California announces itsthird inter national exhibit to be held in the Los Angeles Museum March 20th to April 17th. February 28th will be the last day for receiving exhibits. Etchings, lithographs, block prints, and woodgravings are eligible. Prints may be matted but not framed. Three prizes are offered: a Los Angeles gold medal made of California gold for the best print; a prize of $100 for the best etching in the exhibition, and $25 with promise of an equal sum for purchase of the best etching.

Banking and Art.

Rather unusal have been two exhibits of art photographs made by T. Harmon Parkhurst, in the First National Bank at Santa Fe. They consist of Pueblo studies and landscapes from the cliff dwelling and Indian country tributary to Santa Fe. The first exhibit was in black and white and the second in color. Mr. Parkhurst gives his studies a quality that entitles them to be called works of art, and as such they are finding buyers all over the country. He also furnished the photographic studies for the unique calendar of the First National Bank, which has for years been specializing in local views to illustrate its publicity.

Museum Party Returns.

Lansing Bloom, assistant director, Wesley Bradfield, curator, and Kenneth M. Chapman, art director of the Museum, returned on February 6th from the meeting of the Southwestern Division of the American Association for the Advancement of Science at the University of Arizona, Tucson. They succeeded in securing a meeting of the Division at Santa Fe during the second week in September, 1922. Dr. Edgar L. Hewett, Director of the Museum, was elected a member of the executive committee in place of Dr. John Clark of the University of New Mexico. Dr. MacDougall of the Desert Laboratory was chosen President of the body. A number of papers of more than usual scientific interest were read during the session. The Museum party made the trip to Tucson in the Museum automobile and enroute made reconnaissance of a number of important archaeological sites.

Los Angeles Museum.

The first exhibition of the Sculptor's Guild of Southern California opened with a reception at the Los Angeles Museum of History, Science and Art on Thursday, January 26th. The staff of the Museum of New Mexico acknowledges receipt of an invitation to the affair.

Wichita Art Association.

The Wichita Art Association in its exhibition of "Intimate Paintings" by a group of mid west American painters included canvasses by Edgar S. Cameron, at one time a member of the Santa Fe Art Colony, and who exhibited "The Land of Poco Tiempo" and "La Loma, Santa Fe"; also a canvas by Miss Olive Rush of the Santa Fe Art Colony. Her painting was entitled "Evening Mood." This exhibit was followed by the regular circuit exhibit of the Taos Society of Artists, which had just been returned from Honolulu and was shown at San Francisco before going to Wichita.

MUSEUMS AND GALLERIES

Springfield Art Association.

The recently organized Springfield Art Association of Springfield, Illinois, already has a membership of 500 per-

sons, each paying $10 a year towards the support of an art gallery in the fine old homestead presented by Mrs. Ferguson for that purpose. The building has been remodeled and presented with a collection of antiquities and paintings, including canvasses by Wallace De Wolf which are a feature of the permanent exhibits.

Cleveland Museum.

The Cleveland Museum of Art in its January Bulletin announces that the dedicatory exercises for the memorial organ and the tablet commemorating the gift will be held early in the spring. The installation of the organ was begun in September. Not only is the organ a gift, but an endowment has also been provided. The Cleveland Bulletin also reports a number of changes in the Museum staff. J. Arthur MacLean, Curator of Oriental Art, has accepted the position of assistant director and curator of Oriental art of the Art Institute of Chicago. Mr. William McKee has left the Cleveland Museum to become Curator of Prints and Drawings at the Chicago Art Institute, Miss Margaret Munsen after six years of service with the Cleveland Musenm in charge of the membership department has also gone to the Chicago Art Institute.

John F. Murphy Memorial Exhibit.

From the Salmagundi Club, the museum library has received a copy of a memorial appreciation by James B. Carrington printed in honor of the late John Francis Murphy. A catalogue of the Memorial Exhibit of fifty-two paintings is included.

IN THE FIELD

Guthe Returns to Maya Region.

Dr. Carl Guthe, a member of the Santa Fe Society of the Archaeological Institute, left for Guatemala the last week in January to spend four months in field work in the Lake Flores region. The excavations begun at Tayasal last year will be continued.

GIFTS

During the recent trip of several members of the museum staff, as noted elsewhere, two gifts to the State Museum were made which were of special value. To the already fine collection of war relics which Dr. S. D. Swope had presented to the State Museum and which are on exhibit in the War Memorial Room of the Old Palace, Dr. Swope has added a signal pistol of English make which was used during the Great War. The barrel is of brass with bell muzzle, and the chamber takes a shell an inch and a quarter in diameter. A man using such a pistol might anticipate having his arm blown off by the recoil, but the cartridges used in signalling had only a light charge of powder and were in effect small Roman candles. Two cartridges for red and white signals accompany the pistol. Dr. Swope also presented to the museum an old style powder flask with wooden shot measure and metallic case for caps.

Another valuable gift made to the museum comes from Dr. R. F. Stovall of Mimbres Hot Springs. During his long residence in a region of peculiar interest archaeologically, Dr. Stovall has had an active and intelligent interest in the ruins of that region. The museum has had very few examples from the Mimbres area, so that Dr. Stovall's gift of some fourteen pieces of pottery with other implements of stone is decidedly acceptable.

In this conneection mention might be made of the very large and valuable collection of Indian artifacts which Mr. and Mrs. C. B. Cosgrove of Silver City have gathered from the Mimbres and Upper Gila areas. It was very gratifying to members of the museum staff to be assured by Mr. and Mrs.

Cosgrove that it is their purpose in time to present this collection to the museum. In marked contrast to the misguided efforts of many enthusiasts in that part of New Mexico, who are digging into some of the very important ruins of that region solely for what they may find, Mr. and Mrs. Cosgrove are making careful record of the locations and exact conditions under which the artifacts in their collection are found, as well as making a careful study of the ruins themselves.

ACKNOWLEDGMENTS

The total contributions received by the Archaeological Society of New Mexico towards the purchase of the collection of Chihuahua pottery has amounted to $1,515. Those who contributed are as follows: $1,000, Hon. Frank Springer; $100, Mr. and Mrs. Percy Jackson; $50, Mrs. Catherine P. Wallace; $25, Hon. A. A. Jones, Miss Rose Dougan, C. N. Blackwell; $20, J. N. Zook, Dr. F. F. Prentiss, Roberts Walker, Max L. Rosenberg; $10, Joseph C. Kircher, Mrs. Mabel Sterne, Mrs. L. J. Trowbridge, Henry Gietz, T. Mitchell Prudden, Mrs. C. E. Perkins, Caroline M. Crosby; $5, John C. Underwood, H. Schweizer, H. S. Lutz, Miss Elizabeth Hughes, Edgar L. Street, The Hayward Agency, C. L. Brokaw, Emily C. Fergusson, Robert W. Isaacs Grace C. Balch, Mrs. L. W. McComb, Mrs. Ansel O. Cole, Mr. and Mrs. C. M. Kassler, Henry J. Patten, Jessie C. March, W. O. Bates, Mrs. Ellen S. Palen, W. H. Jackson, Nan Whitely, Mrs. Eva H. Studinezka, Dr. J. A. Massie, C. W. Douglas, Jo Zach Miller III, Dr. and Mrs. H. Postma; smaller amounts, Mr. and Mrs. J. C. Cassell, Mrs. Mary T. Sedgwick, Mrs. Walter Kohn, Katherine Dudley, Miss Gertrude Ely, Mrs. Jacob Weltmer, Mrs. H. Donohoo, Rexford Newcomb, Katherine M. Roberts.

The response in contributions toward the first payment of $2,500 upon this collection was so much smaller than had been hoped for that the contributions of those who did respond have been all the more appreciated. The balance of $1000 is being paid off from the dues of membeships, and it is hoped that the entire amount will be cleared off within the next two months.

Dues Paid.

Santa Fe Society.

Mrs. J. B. Lamy, George G. Wright, Lewis G. Gillett, Mrs. L. E. Quigg, Miss Anna Mugler, Col. J. W. Willson, Mrs. Ruth Raynolds McNary, Howell Earnest, Mrs. King Gillett, Daniel T. Kelly, Dr. Elliott C. Prentiss, John J. Nairn, Mrs. Mary Van Stone, Max Nordhaus, Rose Dougan, Carl E. Guthe, J. B. Gilchrist, Leigh K. Patton, Miguel A. Otero.

Associate Members.

Lawrence A. Tamme, Miss Elizabeth Sergeant, Paul B. Albright, Herbert W. Yeo.

New Mexico Society.

Ralph Pearson, J. G. Osborn, Mrs. J. W. Holt, Mrs. N. S. Bird, Dr. C. E. Lukens, Edward J. Hecker, E. Edgar Guenther, Herbert I. Priestly, Mrs. J. K. Hamilton, Mr. and Mrs. T. Z. Winter, Mrs. M. C. Henderson, Rev. Fridolin Schuster, Mill Sanderson, Harry Whitcomb, Mrs. John F. Pearce, Mrs. Bessie C. Parkhurst, Ruth Squires Winchester, Miss Georgette Riva, Mrs. Carrie Belle Hooper, Dr. Marion W. Williams, Wm. D. Gates, N. J. Strumquist, Edward Van Schick, Emry Kopta, Mrs. Henry Leonard, Leta Serpell, Mrs. J. J. O'Brien, Mrs. Geo. L. Marsh, Mrs. Elizabeth B. Doran, Miss Evelyn R. Bartram, Emily C. Giddings, Mrs. Charles A. Haynes, Carl E. Guthe, Ernst C. Krohn, Jr., Wm. O. Bates, Dr. T. B Lyon, Mrs. Frank Strass,